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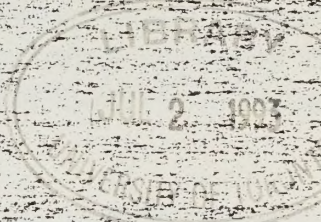
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UKRAINIAN CANADIAN STUDENTS' UNION
(SUSK)

SUBMISSION TO THE COMMISSION OF INQUIRY
ON WAR CRIMINALS



September 3, 1985

OTTAWA, ONTARIO

ABSTRACT

The submission rejects the acceptability of Soviet evidence by the Deschenes Commission in linking the legitimization of such evidence with Soviet intentions of destroying the Ukrainian Canadian community, and especially its youth. The three-pronged approach which is taken in the submission delineates Soviet motivations and processes involved in reaching the objective of Ukrainian Canadian community destruction. The submission reveals the manner in which unsubstantiated and unprincipled Soviet accusations against Ukrainian Canadian groups and individuals (Part One) foster widespread animosity towards Ukrainian Canadians including youth (Part Three). The Soviet campaign at promoting ill will stems from a fear of the effects of the Ukrainian Canadian community's exhortations and activities which serve to redefine Ukraine's interest vis-a-vis the Soviet political community and regime (Part Two).

The Ukrainian Canadian Students' Union (SUSK) has existed as an organized body of Ukrainian Canadian university and college students and alumni since 1953. The SUSK National Executive currently represents 18 separate local Ukrainian student club affiliates across Canada with a total membership approaching 1,000.

As part of its mandate, the National Executive of SUSK speaks out vigorously on issues which we feel may be of overwhelming importance to the Ukrainian Canadian student community. Presently, we believe that there is a pressing need to address the Commission of Inquiry on War Criminals (Deschenes Commission), regarding its acceptance of Soviet evidence. We feel that the inclusion of such evidence in the Commission's work will have a long-term detrimental effect on the Ukrainian Canadian community, including negative repercussions on present and future Ukrainian Canadian students.

The National Executive of SUSK is deeply offended by developments which we believe may compromise Canadian liberal democratic values and principles. We are, of course, referring to the possibility of the Deschenes Commission legitimizing all forms of Soviet evidence. As Ukrainian Canadian youth, we have acquired democratic values through our socialization in the Canadian socio-political and educational systems. Moreover, because of our ethnic background, we have been encouraged to acquire an awareness of the fundamentally different nature of the Soviet polity. Consequently, we value our Canadian democratic beliefs highly and will not readily countenance what we believe may be their violation.

We are especially anxious, as younger members of the Ukrainian Canadian community, that the Commission uphold our Canadian democratic beliefs. To accept Soviet evidence is to open the Commission to possible manipulation, which may end in the destruction of the Ukrainian Canadian

community as a whole. We believe that young Ukrainian Canadians will be forced to flee from organized Ukrainian Canadian life in order to secure a successful personal future for themselves and for their children.

Our purpose is to express our objections regarding the admissibility of Soviet evidence. The brief consists of three separate parts which give a unique youth and student perspective as to why we believe that Soviet evidence should be made inadmissible. The first section deals with the Canadian political principles that we all know and cherish, and which we feel are being violated through the acceptance of Soviet evidence. The second part describes the Soviet Union's campaign to discredit Ukrainian Canadian youth and the motivation behind this campaign. The third segment documents negative fallout affecting young Ukrainian Canadians from developments surrounding the Commission's work thus far, and how this reflects Soviet intentions.

I. PRESERVING JUSTICE

The SUSK National Executive believes that the Soviet Union is making unprincipled accusations against groups and individuals residing in Canada, and basing these allegations on their ethnic origin. These unsubstantiated and damaging accusations greatly offend us since they violate the traditional Canadian democratic values of "political equality" and "rule of law," and because as Canadian youth of Ukrainian origin we are finding that it is our ethnic group which is being specifically targeted in these attacks.

The SUSK National Executive believes that above all else the principles of "political equality" and "rule of law" be respected, consistently and unequivocally, throughout the Deschenes Commission's full mandate. By "political equality" we mean those political freedoms such as freedom of assembly, association, conscience and expression which are tied inextricably with democracy as a governmental form.¹ The Canadian Charter of Rights and Freedoms states that these rights and freedoms are to exist in Canada, "without discrimination by reason of race, national origin, colour, religion, sex, or age." By "rule of law" we mean that,

...Canadian tradition (which) asserts that any interference with the freedom of any individual must be performed only according to the legal process and carried out by legitimate authorities. No one is exempt from the law, and no one can affect the rights of any individual except by the legal process.² (underlined our emphasis).

Furthermore,

...the relationship of the individual to the political system becomes to

some extent, fixed and impartial...(it) is presumed to be coldly impersonal, predictable, and rational rather than emotional.³

The SUSK National Executive fears that the Soviet Union is working to undermine these two principles of "political equality" and "rule of law" in Canada in their methods of accusations of war crimes against Canadians, specifically labelled as being of Ukrainian ethnic origin. As a result we have witnessed unsubstantiated Soviet accusations against entire groups of Ukrainian Canadians who are alleged to have participated in atrocities committed by Nazis during the Second World War. The following examples cited represent but a few of the allegations. 1. In the summer of 1984, a thirteen page leaflet, drawn up partly from Soviet sources and entitled "Winnipeg's Nazi Suspects - Do Nazi Criminals Live on Your Street?", suddenly began to be circulated in and around Winnipeg.⁴ 2. More recently, the Soviet Embassy in Ottawa has been wantonly distributing a list of purported Ukrainian Canadian war criminals entitled "War Criminals Residing in Canada."⁵ Two members of the Concordia University Ukrainian Students' Association, Andriy Hluchowecky and Adrian Chomenko, requested information regarding war criminals residing in Canada at the Novosti Press Agency in Ottawa in May of 1985. The aforementioned bulletins and a Soviet list of suspected war criminals were promptly forwarded to them with no questions asked.

As well, there has been a recent onslaught of Soviet disinformation published in book form in both the Ukrainian and English languages where names are cited of Ukrainian groups and individuals that are now said to be residing in Canada.⁶ The Soviet disinformation campaign against Ukrainians also continues in the form of periodicals which are disseminated across Canada including Ukraine monthly, and News from Ukraine and Visti z Ukrainy weeklies.

Hence, the SUSK Executive believes that the Soviet Union is violating the two Canadian principles of "political equality" and "rule of law" in the following fashion: first, by making blanket accusations against the Ukrainian Canadian community and thereby attacking its ability for freedom of conscience and freedom of expression; and secondly, by acting as an illegitimate authority in Canada and interfering with the individual rights of Canadian citizens outside the Canadian legal process.

II. SOVIET ATTEMPTS AT DISCREDITING UKRAINIAN CANADIAN YOUTH

The Soviet Union in its exhortations and publications resorts to the most ludicrous and malicious misstatements of fact in order to impugn the good name of Ukrainian youth in the West. In the Soviet view, organized Ukrainian Canadian students pose a double threat, in that as a whole:

1. We do not recognize the political community known as the Union of Soviet Socialist Republics which has incorporated Ukraine as a republic; and 2. We do not subscribe to the Soviet Communist political and economic model.

It is true that SUSK does believe in, and does work toward, the establishment of an independent Ukraine through peaceful means. In addition, SUSK has demonstrated an overwhelming commitment to individualism and to individual liberties, ideas which are associated with the concept of liberal democracy.⁷ Therefore, SUSK supports Soviet Ukrainian dissidents who have been incarcerated for their beliefs on Ukrainian national and individual human rights.

The Soviets will, of course, not countenance any groups which work towards diminishing the terror of the U.S.S.R., or which espouse the belief that individual liberties should take precedence over collective state objectives. It has been proven time and time again that those Soviet citizens who place individual rights over collective ones, or who place nationalist demands over pan-Soviet ones, will inevitably be incarcerated in Soviet prisons.

In light of Soviet orientations regarding the inviolability of Soviet borders and of the political ideal of collectivism, there is no value placed by Soviet authorities on the Western political tradition of protecting the rights of their own citizens, and there is no reason to believe that the Soviets would not attempt a similar treatment of any extraterritorial opposition if provided with a chance to do so. For this reason, the Soviets cannot be trusted with presenting evidence before the Deschenes Commission. They are certainly intent on indiscriminately attacking the Ukrainian ethnic group on the basis of that group's opposition to the Soviet state.

While most Canadians probably share the same sentiments as Ukrainian Canadians in their opposition to the injustices in the Soviet system, it is the Ukrainian Canadian groups which are particularly active in speaking out forcefully against the U.S.S.R. Consequently, the Soviets are eager to strike out against such groups in an effort to silence them. Most recently, Soviet attacks on Ukrainian Canadian groups have been centered around accusations of war-mongering and the threat to peace. For instance, a recent issue of Ukraine magazine states, "...Ukrainian nationalists are all out for building up the arms race, for further enhancing the 'imperialistic' position of strength politics, and for a steady deterioration of relationships between countries with different social systems."⁸

The Soviet Union is especially perplexed by the fact that Canadian-born youth of Ukrainian origin continues to speak out against the Soviet system.

be it on its record of human rights violations or its policy towards national minorities. To exemplify the Soviet concern, one of their recent publications states the following:

Having been thoroughly brainwashed in the spirit of hatred against the Soviet Union and the Ukraine's social and political order, these people regard themselves as 'Ukrainian patriots' and 'fighters for a better destiny for the Ukraine.' In reality, they are victims of some extremely treacherous falsehood.⁹

Moreover, the Soviets are attempting to equate present-day Ukrainian Canadian youth efforts at revealing the current injustices of the Soviet system with an underlying fascism and Nazism. The Soviets attempt to establish a link between the efforts of Ukrainian youth, born in the western democracies, with the generation of Ukrainians who were caught in the throes of the Second World War. Thus, according to Soviet thinking, a young Ukrainian-American who fought in the Vietnam war, "...was decorated with medals by the Pentagon generals for the extermination of the Vietnamese - a 'degenerate' and 'inferior' race, from the viewpoint of American fascists." Additionally, according to the Soviets, this particular Ukrainian-American's Ukrainian-born father is to be held responsible for instilling in his son "...a fascist education and (he) took it as a guide to action."¹⁰

The Soviets do not hesitate to construct a similar fascist linkage with entire associations of Ukrainian Canadian youth. Our own organization, SUSK, has not been left untouched. In a Ukrainian language publication entitled Pastka dlia molodi (Pitfalls for Youth), O.V. Kartunov declares that, in the 1960s and 1970s, SUSK was somehow able to avoid fascist and neo-fascist ideological thought. However, "in the ensuing years, especially after members of TUSM (another Ukrainian student association in the West - writer's addition) crawled into the leadership of SUSK, apart from its other goals in social and cultural endeavours, has always provided differing points of view.

The Soviets will resort to any means to discredit Ukrainian organizations in the Western world including youth organizations, inasmuch as they are perceived to present a threat to the very existence of the Soviet state, in terms of competing goals regarding the territory of Ukraine and its political ideology. The Soviets attempt to label all Ukrainian non-Communist youth groups as being fascist in orientation, and claim that these groups, in their current manifestation, are tainted with the same Nazi fascism as existed during the Second World War. In general then, the Soviets will not hesitate to exploit the combustible atmosphere surrounding the Deschenes Commission Inquiry in order to foster animosity against present-day Ukrainian Canadian youth and student

associations.

III. EXAMPLES OF NEGATIVE REPERCUSSIONS OF THE DESCHENES COMMISSION ON UKRAINIAN CANADIAN YOUTH

Since the start of the Deschenes Commission's hearings in early 1985, feature stories started to appear in the Canadian media discussing specific groups and individuals of Ukrainian ethnic origin that were accused of being implicated in Nazi atrocities. Since then, case by case evidence has been accumulating from all over Canada describing how the Ukrainian community's good name is being smeared in this country.

Among the groups named by the media were the "Waffen SS Division Galizien", which received prominent attention as a military unit comprised of Ukrainians.¹² Feature stories also appeared in the media concerning individual Ukrainians who were being implicated in Nazi war crimes.¹³ The persistent attention devoted by the media to the ethnic identity of the alleged perpetrators of these atrocities served to establish a negative image of Ukrainian Canadians as a cultural community in Canada. The Soviets contributed significantly to this process by making readily available lists and literature purportedly implicating Ukrainian Canadians in war crimes.

Ukrainian Canadian youth, which obviously had no involvement at all in the Second World War, began to feel a considerable amount of hostility from the Canadian populace at large. The negative fallout can be illustrated by citing numerous incidents which have occurred since the media began its reporting on the Deschenes Commission.

- * A Globe & Mail report from February 1985, describes how a man had his son tell him that fellow students were accusing him of having a Nazi father.¹⁴
- * The same Globe & Mail report quotes Joanna Jaciw, a Toronto resident as having been slurred along with her children by people who cite reports linking Ukrainians in Canada with the SS.¹⁵
- * In May 1985, CBC Radio broadcast an interview with Mike Maryn, 26, a former law student at the University of British Columbia and former National President of the Ukrainian Canadian Students' Union, indicating that a close Jewish friend told him the following: "I didn't know that your Ukrainian people were such murderers."¹⁶

- * A Winnipeg Free Press report from May 1985, quotes Professor Osyp Hawaleshka of the University of Manitoba as saying that his son Adrian, 15, was hearing negative remarks from his playmates concerning Ukrainian history.¹⁷
- * A Globe & Mail report from May 1985, cites a submission from recent University of Manitoba graduate, Bondanna Dutka, 21, in which she describes how she has been personally affected by the Deschenes Commission and how she feels it will affect her children and their descendants.¹⁸
- * Gregory Smolynec, 19, a CEGEP student in Montreal was heckled at a March 3, 1985 meeting of B'Nai B'rith of Canada (Montreal Chapter) that was devoted to the subject of war criminals in Canada, when he identified himself as a Canadian of Ukrainian descent while asking a question concerning Soviet evidence before the Deschenes Commission.¹⁹

As can be witnessed from the preceeding experiences, Ukrainian Canadian youth are finding themselves in the midst of a campaign which is forcing them to defend the good name of all Ukrainians in Canada even though over 90% of Ukrainian Canadians were born in this country and could not possibly have been implicated in Nazi atrocities. Through their invidious publications, the Soviets are assisting in the generation of negative feelings and outright hostility towards all Ukrainian Canadians, including youth.

IV. SUMMARY AND CONCLUSIONS

Our brief has attempted to show the reasons and methods behind the Soviet campaign to discredit Ukrainian Canadian youth. The SUSK Executive strongly believes that the Soviets are manipulating the environment surrounding the Deschenes Commission Inquiry in Canada in order to wage an all out campaign of disinformation that is intended to destroy the Ukrainian community in Canada forever. By including youth in their attacks, the Soviets hope that younger Ukrainian Canadians will flee the community and that organized Ukrainian Canadian life will cease to exist in this country in the near future.

The main points which we have stressed in this brief are the following:

1. Canadian political principles of "political equality" and the "rule of law" are being violated by the Soviets in their indiscriminate accusations against Ukrainian Canadian groups and individuals.

Acceptance of Soviet evidence by the Deschenes Commission will serve to sanction this violation.

2. The Soviet Union is waging an all-out attack on Ukrainian Canadian youth groups including SUSK inasmuch as these groups do not recognize the political community, nor the regime, of the Soviet Union.

Soviet evidence presented to the Deschenes Commission will have as its goal the destruction of the Ukrainian community in Canada as well as its youth component. The lack of a political tradition of protecting individual rights, suggests to us that the Soviets would see no harm in targeting individuals and groups which belong to the Ukrainian Canadian community as war criminals, since that community is seen to pose a threat to the continued existence of the Soviet state.

3. Ukrainian Canadian youth, born and raised in Canada, and in no possible way associated with the atrocities perpetrated during the Second World War are being harassed, by virtue of their ethnicity, for alleged war crimes.

The above situation is being exacerbated by the Soviets through their unsubstantiated allegations and defamatory publications. The acceptance of Soviet evidence by the Deschenes Commission will give an undeserved legitimacy to these hateful attacks.

September 3, 1985

Respectfully submitted by the National Executive of the Ukrainian
Canadian Students' Union (SUSK),

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FOOTNOTES

- ¹R.J. Van Loon and M.S. Whittington, The Canadian Political System (Toronto: McGraw-Hill Ryerson Ltd., 1981), p.97.
- ²Ibid., p. 159.
- ³Ibid., p. 159.
- ⁴Ukrainian Weekly, June 9, 1985, p. 5.
- ⁵Ibid., p. 5.
- ⁶For examples see the following:
 - a) Victor Chumak, Who's Who at WCFU (Kiev, U.S.S.R.: Ukraina Society, 1984).
 - b) V. Styrykul, The SS Werewolves (Lviv, U.S.S.R.: Kamenyar Publishers, 1982).
 - c) Marko Terlytsia, Here is the Evidence, (Toronto: Kobzar Publishers, 1984).
- ⁷For discussion of Western -style liberal democracy as contrasted with Soviet collectivist thought see:
 - a) Van Loon and Whittington, pp. 97-100.
 - b) John S. Reshetar, The Soviet Polity (New York: Harper Row Publishers, 1978), p. 176.
- ⁸Ukraine, "Where WCFU is Headed", February, 1985, p. 16.
- ⁹Chumak, p. 5.
- ¹⁰News From Ukraine, Kiev, U.S.S.R., No. 16, April 1985, p. 7.
- ¹¹O.V. Kartunov, Pastka dlia molodi (Kiev, U.S.S.R., 1982), pp. 64-65.
- ¹²For examples see the following:
 - a) Globe & Mail, "Ukrainian Veterans to Dispute Crime allegations at Inquiry", Toronto, April 25, 1985.
 - b) The Ottawa Citizen, Ottawa, May 14, 1985, pp. A1, A10.
- ¹³For instances, see the following:
 - a) Globe & Mail, Toronto, April 10, 1985, pp. 12.
 - b) Winnipeg Free Press, May 13, 1985, pp. 1,4.
- ¹⁴Globe & Mail, Toronto, February 15, 1985, p. 4.
- ¹⁵Ibid., p. 4.
- ¹⁶Canadian Broadcasting Corporation, AM Radio Network, Ottawa, May 18, 1985.
- ¹⁷Winnipeg Free Press, May 19, 1985, pp. 1, 4.
- ¹⁸a) "Extradite to Country of Crime, Inquiry Urged," Globe & Mail, Toronto, May 23, 1985.
b) Brief presented to the Deschenes Commission by Bohdanna Dutka, May 22, 1985, Winnipeg.
- ¹⁹Interview with Gregory Smolynec, Ottawa, June 1985.

WHY DISCRIMINATE?

The Soviet Union has given the Canadian Government a list of 37 names of alleged Nazi war criminals.

In total, the Justice Department came up with 48 names of individuals in Canada alleged to have committed war crimes.

"Most, if not all, the persons against whom accusations have been made came originally from Eastern Europe, mainly from places *now within the Soviet Union*," says a recently-released cabinet task force report.*

That's very curious indeed.
Some questions arise:

Does Moscow have a vested interest in discrediting refugees who were forced to flee Eastern Europe?

Why is the Commission of Inquiry on War Criminals focusing on political enemies of the Soviet Bloc?

Are not all war crimes — in Nazi Germany, in the Soviet Union, Vietnam, Cambodia, Angola, and the Middle East equally horrible?

Why are they being excused from investigation by the Commission?

Whatever happened to the Government's acceptance of a policy of evenhandedness that promised "to deal with war criminals....regardless of where or when the wrongdoing took place."*

It's a tragedy for all Canadians of Eastern European descent that the memory and the history of our homelands are being defiled by Soviet allegations of war crimes in Eastern Europe more than a generation ago.

If there are differences tell us what they are, so we can explain them to our children, our friends, our neighbours, and our colleagues at work. We're sure they must be wondering.

* *Alleged War Criminals in Canada*
Mervin Linn
Sensational Minister:
Minister of Justice
(A-13-03-1983-01)



"How do we explain to our children?"

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Ukraine's wartime unit never linked to war crime

BY L.Y. LUCIUK

Dr. Luciuk is a postdoctoral fellow in the University of Toronto's ethnic and immigration studies program.

SPORADICALLY since the end of the Second World War, reports have appeared in the media suggesting that large numbers of Nazi war criminals and collaborators managed to escape justice and hide in Canada.

Amid recent media scrutiny, however, were serious misrepresentations regarding the character and role of the Ukrainian Division "Galicia," comprised of Ukrainians recruited by the Germans to fight against the Soviet Union.

These charges rest on the false assumption that all soldiers of East European units attached to the German armed forces were motivated by collaborationist and anti-Semitic sentiments.

This situation has deeply concerned the Ukrainian Canadian Committee, which recently issued a statement indicating that whereas all Canadians wish to see genuine war criminals found and legally prosecuted, the current publicity has overshadowed the good name of Canadians of Ukrainian background.

When Nazi Germany invaded the Soviet Union in June, 1941, its leadership had no intention of recruiting Ukrainians to the German armed forces. Like all other Slavs, the Ukrainians were relegated to the category of *Untermenschen* (sub-humans); Ukraine was considered a source of food and raw materials for the Third Reich as well as an area of future German colonization. Hundreds of thousands of Ukrainians were persecuted by the Nazis; thousands were to perish in concentration camps.

Not until 1943, following the German defeat at Stalingrad, was the Waffen-SS permitted to recruit a "Galician Division" from the population of Western Ukraine. Even at this point (July, 1943), Adolf Hitler and Heinrich Himmler strongly opposed any concessions to Ukrainian nationalism and insisted that the division be referred to as "Galician" and not "Ukrainian".

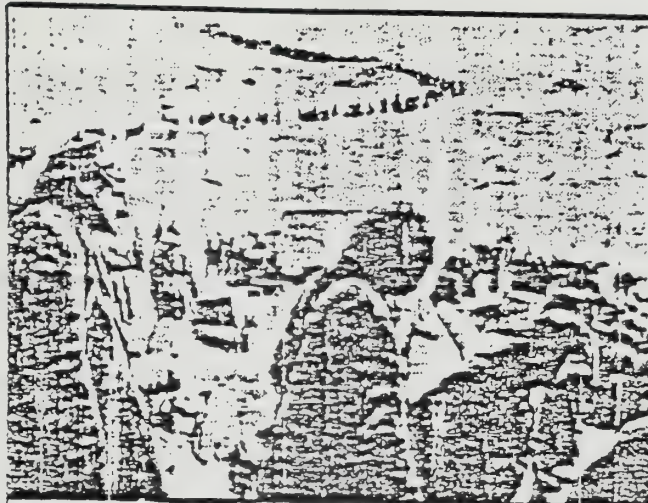
Ukrainians were willing to join the division because they anticipated that the defeat of Germany would be followed by a further conflict between East and West. They were eager to have ready a military formation — even one originally sponsored by the Germans — to serve as a nucleus for an independent and national Ukrainian army able to resist Communist aggression. Accordingly, the agreement creating the division specified that it would be used exclusively against Soviet forces and not against the Western Allies.

Following several months of training, the division was transferred to the Brody area of Western Ukraine, where it was included in the 1st Armored Army of the "Heimwehr," Joseph Goebbels' German "loyal" "ready superior Red Army" forces and surrounded in the "Brody pocket" on July 19-20, 1944, the division's 12,000 soldiers were badly mauled. Only one in five survived. Some of these men joined the Ukrainian Insurgent Army which fought both Germans and Soviets.

Subsequently, the division was reformed at Neuhausener in Silesia, the re-formation taking part in relatively minor military engagements. At no point was the division involved in the Nazi extermination of Jews or other Slavs.

On April 27, 1945, at the insistence of the Ukrainian soldiers, the division was reformed and reconstituted as the 1st Ukrainian Division of the Ukrainian National Army under the command of Major-General Pavlo Shandruk. It was redesignated as such by the British near Radstad on May 6, 1945, its members being accorded the status of surrendered enemy personnel.

Eventually the division was interned at a camp near Rimini, Italy, where British and Soviet investigators thoroughly reviewed its war record. In a three-secret



The winding line of Germans captured at Stalingrad. Right: Russians defending the city. Below: Field Marshal Von Paulus surrenders to end the battle. After Stalingrad, the Ukrainian Galician division was recruited by the Waffen-SS.



report prepared for the British Government, D. Haldane Porter, who was in charge of Refugee Screening Camp 374, Italy, wrote (Feb. 21, 1947) that Ukrainians had enlisted in the division "in the hope of securing a genuinely independent Ukraine... They probably were not, and certainly do not now, seem to be at least pro-Germans."

In a "top secret" report regarding the repatriation of Soviet citizens, sent to the undersecretary of state at the British War Office, London, it was noted that compelling members of the division to accept repatriation to the Soviet Union would certainly "involve the use of force or drive them into committing suicide." Furthermore, the knowledge that these individuals, if sent back, would be dispatched to "an almost certain death" was considered out of keeping with British traditions of justice and democracy. Since the United Nations War Crimes Commission indicated to the British For-

ign Office that it had no Ukrainians war criminals on its list, the decision was made not to forcibly repatriate members of this unit to the Soviet Union.

The division was therefore transferred to Britain, beginning in June, 1947, and held there by the British Government until further screening could be carried out. As early as 1946, prominent Ukrainian Canadians had attempted to secure the release of the division's members, while also helping them emigrate to Canada. On May 31, 1950, following consultations with the RCMP, the Cabinet issued a statement admitting members of the division to Canada.

The High Commissioner for Canada in Britain wrote to the Secretary of State for External Affairs that, "while in Italy these men were screened by Soviet and British missions and neither then nor subsequently has any evidence been brought to light which could suggest that any of them fought against humanity."



Their behavior since they came to this country has been good and they have never indicated in any way that they are infected with any trace of Nazi ideology.

"From the reports of the special mission set up by the War Office to screen these men, it seems clear that they volunteered to fight against the Red Army from nationalistic notions which were given greater impetus by the behavior of the Soviet authorities during their earlier occupation of the Western Ukraine after the Nazi-Soviet Pact. Although Communist propaganda has constantly attempted to depict these, like so many refugees, as 'Quislings' and 'war criminals' it is interesting to note that no specific charges of war crimes have been made against any member of this group."

Understandably, the Canadian Jewish Congress (CJC) was concerned about the admission of individuals allegedly guilty of "war crimes" to Canada. Its representations to the Canadian Government, however, were based on misinformation.

The CJC claimed that it possessed "actual documentary proofs" of the division's involvement in war crimes. When asked to produce these by the Ukrainian Canadian Committee, during August and September, 1950, it failed to do so. Nonetheless, the stir created prompted the Cabinet once again to consult the British Foreign Office to make certain the division was not a Nazi formation. The British confirmed that the group was neither anti-Semitic nor guilty of war crimes. On Sept. 21, 1950, the Cabinet reaffirmed its earlier decision to admit the division's members to Canada.

No evidence has since been produced to suggest the Cabinet's decision was inappropriate.

The major, and highly dubious, source of allegations against the division is the Soviet propaganda machine. Since the war's end, Soviet authorities have generated a stream of undocumented brochures associating the division with the Holocaust. The most recent of these was titled *The SS Werewolves* by V. Strydom. No scholarly work has substantiated any of the Soviet claims. One may refer to the following non-Ukrainian historians — John Armstrong, Ukrainian Nationalism; Nikolai Tolstoy, Victims of Yalta; Alexander Dallin, German Rule in Russia, 1941-1945; or David Littlejohn, The Patriotic Traitors — for objective descriptions of the division's history. Regrettably, Soviet misinformation continues to fuel controversy about an issue that was resolved by 1951.

Furthermore, a wealth of documentary and oral evidence shows the division cannot be linked to crimes against humanity. For example, Dr. Weyl Verha, a veteran and author of several books on this formation, says, "The Ukrainian Division 'Galicia' never took part in the extermination of the Jews or in the suppression of the Warsaw Ghetto uprising. It was strictly a military, front-line unit of the Waffen or Armed SS, and never a concentration-camp guard formation."

Those concerned with identifying and prosecuting war criminals must make full use of the material readily available to Canadian archives and libraries before making charges. To ignore the evidence is to fall prey to propagandistic distortions.



Crosbie: put matters to rest.

BY RON VASTOKAS
and LUBOMYR LUCIUK

Mr. Luciw is a post-doctoral fellow at the University of Toronto. Mr. Vastokas teaches anthropology at Trent University.

IN 1973, Joe Clark, who was then Prime Minister, set up a task force on alleged war criminals in Canada. One conclusion of the task force report, prepared by Martin Low, was that "even-handedness would require that any policy to deal with 'war criminals' should apply to any person regardless of where or when the wrongdoing took place."

Inexplicably, the present Government ignored this recommendation when it set up the Commission of Inquiry on War Criminals in February, 1985, limiting its mandate to the investigation of war criminals related to the atrocities of Nazi Germany. To Canadians of East European background, the decision to investigate only alleged Nazis is perceived as selective, even arbitrary.

In their view, the Soviet Union is as guilty of genocide as Germany, with which it signed a non-aggression pact in 1939. In the Baltic area, executions, massacres and deportations began during the first Soviet occupation in 1941 and continued when the Soviet army returned in 1944.

In Lithuania, some 600,000 men, women and children, a quarter of the population, were shipped out of the country in sealed freight cars and, in the words of Soviet dissident author Alexander Solzhenitsyn, "tipped like dung into the frost-bound soil." A similar fate met half a million Estonians and Latvians and, in proportionately greater numbers, the people of Ukraine.

The Soviet secret police, the NKVD, masterminded these mass arrests and executions, set up the concentration camps and even pioneered the use of gas chambers, at Vorkuta in 1938. The NKVD was responsible for the massacres at such places as Katyn, Vinnytsia and Lvov, where a total of some 30,000 Poles and Ukrainians were executed.

Together with SMERSH killer battalions, the NKVD also liquidated many of the more than two million people forcibly repatriated to the Soviet Union in 1945 by the United States, Britain and Canada.

None of the men responsible for these atrocities has ever been brought to justice.

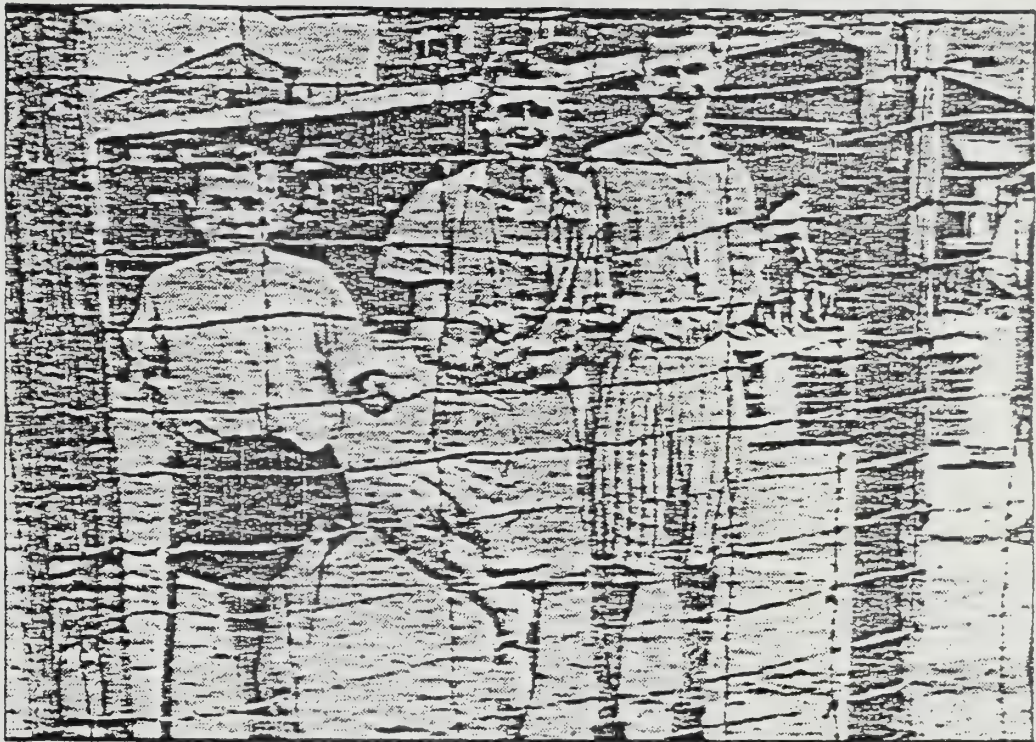
Despite these facts, the Ukrainian Canadian Committee and other East European organizations publicly expressed their support for the decision to establish the Deschenes Commission, believing that the Government would bring all war criminals, regardless of background, to trial in Canadian courts. Unfortunately, this position was not given much attention by the Canadian media.

The way the mandate has been interpreted has not allowed the introduction of evidence on Soviet war crimes, although there are lists of alleged Soviet war criminals available and some of them may well be living in Canada.

Since the Soviet Union and Nazi Germany were allies from August, 1939, to June, 1941, when many of the atrocities were committed,

SOVIET VILLAINS OMITTED

A flaw in Canada's search to uncover war criminals



Prisoners at the notorious Buchenwald concentration camp manage a smile on day of freedom in 1945.

ted, these lists should be investigated. The contention of Soviet spokesmen that only Nazi Germany can be held accountable for crimes of genocide, or that evidence of Soviet crimes against humanity is "fabricated by Fascist reactionary emigres," is nothing more than disinformation.

Meanwhile, little thought or consideration seems to have been given to the concerns of the East European community by those who set up the inquiry, despite the fact that Mr. Low's report said, "most, if not all, the persons against whom accusations (of complicity in Nazi war crimes) have been made came originally from Eastern Europe." There were no consultations with any of the East European communities before the commission was set up.

The question of how many Nazi war criminals might be in Canada appears to have been significant in creating the inquiry. Justice Minister John Crosbie, at a press conference announcing the commission, remarked that "they say there are 3,000 (war criminals) in Canada and we say, no, as far as we know there's no more than 30 or 40. Many groups do not believe the federal estimates ... so by having this commission ... this should put the matter to rest."

Regardless of numbers, many East European community leaders would agree with Professor Irwin Collier, counsel for the Canadian Jewish Congress, that "if there is one Nazi living in Canada, that is too many," since many of their people also perished in the Nazi concentration camps. The position of David Matas, counsel for the B'nai B'rith, that "all war criminals ... should be brought to justice" is even more

acceptable, since all Canadians would agree that one Soviet war criminal living in Canada is also one too many.

However, the selective mandate of the commission, its focus on Eastern Europeans, particularly Ukrainians, the unsubstantiated allegations about thousands of war criminals to be found in these communities, and the decision to seek Soviet evidence of Nazi war crimes, have engendered a perception among many Canadians that the entire process is little more than a witch-hunt. A bitter controversy has also been fanned in the Jewish, Baltic and Ukrainian ethnic press.

A full-page advertisement in The Globe and Mail last Sept. 23, based on the Martin Low Report and asking, "Why Discriminate?" evoked a harsh reply in a Canadian Jewish News editorial. It charged that Canadians of East European origin and descent were "harboring" and "protecting persons in their midst who are accused of murder." A November issue of Ukrainian Echo contained a countercharge which read, in part: "You know and we know that a number of Jews worked willingly with the Soviets ... when will we see your community admit to this?"

The tragic irony of all this is that the leading participants in the debate, Canadian communities of East European and Jewish origin, have both suffered repression and genocide. All came to this country to build new lives. Yet suggestions that an accord be reached between these groups have been frustrated by the anger generated by media coverage, which has revived old charges.

For example, according to Rabbi W. Gunther Plaut, one particularly sore point in Ukrainian-Jewish relations is "the accusation by many Jews that a Ukrainian SS division took part in vicious butcheries of Jews" in the Second World War. This claim has been made before. In 1950, the Canadian Jewish Congress said it possessed "actual documentary proofs" of the Galicia Division's involvement in war crimes. The Ukrainian Canadian Committee asked that these documents be produced. They were not.

The controversy surfaced again last year and all the familiar innuendos were repeated. At least this issue has been resolved, for as Yves Fortier, counsel for the Commission on War Criminals, noted on Oct. 3: "I am pleased to put on the record ... that if the only allegation against a resident of Canada is that he was a member of the Galicia Division, that is not an individual that we consider should be made the subject of an investigation."

If the mandate had not been so selective and if careful attention had been paid to the complexities of this issue by the media, then the controversy that now cripples this inquiry might have been avoided or diminished. Again, Mr. Low's report presciently said that "there is ... a serious problem of perception and definition which would have to be resolved in the development of any policy to deal with 'war criminals' in Canada."

It is hoped that once the inquiry has completed its investigation, some four months hence, the matter should "be put to rest," as Mr. Crosbie said.

HUNTING NAZIS

We shouldn't trust Soviet evidence in seeking out war criminals

By RON VASTOKAS

DURING HIS RECENT trip to the Soviet Union, External Affairs Minister Joe Clark asked a senior official in Kiev if a Ukrainian national, held in a labor camp for 40 years, might be released to join his family in Canada. The official got angry and told Clark that the man was in prison for crimes against the state, that his future was a matter for the People's Court to decide and, besides, "how many war criminals ... have been prosecuted in Canada, despite ... requests for extradition?"

The notion that the West harbors thousands of war criminals is commonplace in the Soviet press. Izvestia, the state newspaper, says (Feb. 28, 1983) that "foreign jurists were given evidentiary material ... concerning no less than 70,000 Nazis," but that this evidence, gathered by the Committee for State Security, the KGB, was hardly ever used.

Since Ottawa's Commission of Inquiry on (Nazi) War Criminals began its hearings in April, that Soviet "evidentiary material" has become the subject of a major controversy. It has been denounced as highly questionable and politically motivated. A heated debate has also been going on in the United States where the Office of Special Investigation (OSI) has been using Soviet-supplied evidence in its denaturalization cases against alleged Nazis. Now that there have been calls for a Canadian version of the OSI, and our commission is thinking about using Soviet evidence, the reasons of the American experience are worth looking at.

In January 1980, Allan Ryan and Walter Ruckel, former directors of the special investigations office, went to Moscow and struck an agreement to use Soviet testimony in American courts. They asked the Soviets to provide documents and permit witnesses to travel to the U.S. to testify. Although the Soviets said there would be "no objection" to this arrangement, the office had to settle for what Ryan calls an "acceptable substitute," the videotaping of depositions in U.S.S.R. courtrooms. The Soviets have not allowed a single witness to testify in the U.S.

The target of the investigation, in the United States and in Canada, is the massed persons from Eastern European countries that are now occupied by the Soviet Union. In the 21 active OSI cases, all but two of the defendants are from Eastern Europe. In Canada, "most, if not all, the persons against whom accusations have been made came originally from Eastern Europe," says a cabinet task force report on Alleged War Criminals in Canada (1981).

To get a full perspective on this issue, however, it is not enough to ask how the arrangements made in Moscow worked out in practice. As important are the questions, why was Moscow so ready to co-operate with the special investigations office and how much is the Soviet legal system an expression of the goals of the Soviet state?

At the end of The Gulag Archipelago, Aleksandr Solzhenitsyn says that "the law is our country, in its might and in its flexibility, is unlike anything called 'law' elsewhere on earth." The many reasons Solzhenitsyn gives to support this conclusion boil down to the single fact that Soviet courts are totally subservient to the Soviet state and the rule of law has been supplanted by the man who rules. Lenin's famous dictum "a law is a political measure, it is political," appears as much in the Soviet Union today as it did in

the heyday of the revolution. Even then Lenin was taking his cue from a historical trend. Czarist governments always tended to look upon law as a device for controlling the population.

The Soviet legal system, therefore, is an extension of state policy where political class and war crimes have a special place. Izvestia itself says that "the interests of the state dictate all of the ... work in the search for war criminals" (Feb. 22, 1983). For all practical purposes, it is the current ideology and the ruling party, not the merits of the case, that dictate its eventual outcome. That is why the Soviet courts, since October 1917, have not acquitted anyone arraigned on political charges. An investigation must end without fail in a conviction because the defendant that is brought to court is assumed guilty, or, as the dissident Vladimir Bukovsky puts it, "In the opinion of the KGB and the party, his time has come."

Moreover, the state decides who is or is not a war criminal. "In the eyes of the Soviet authorities, for example," says the cabinet task force report, "war criminals may be an apt description for Soviet prisoners of war held by the Nazi forces and for partisans who resisted the Soviet occupation of Eastern European countries." The persons on the list submitted to the government by the Soviet embassy in Ottawa are not looked upon as "alleged" war criminals. They are war criminals, and the purpose of the courts is to punish them, not to try them. This point was underlined in a recent statement by the Soviet embassy spokesman to the Ottawa Citizen (June 5, 1983). Alexander Podolski said that Moscow could make available testimony taken in absentia against "some of these criminals" now living in Canada.

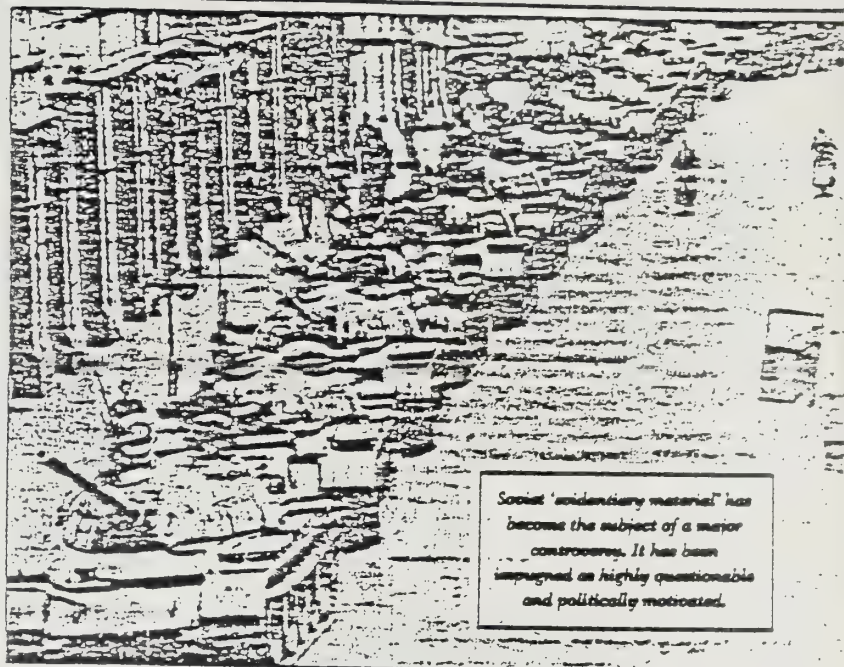
THE OUTCOME of political trials in the U.S.S.R. is determined beforehand by the authorities. The January 1983 issue of Soviet Legality, the official gazette of the procurator general, gave an account of a war criminal trial in Tartu, Estonia. The reporter described the questioning of the witnesses, the exhibits before the court, the cross-examination of the defendant, and the prosecutor's remarks. He noted that the passing of the death sentence was "met with the unanimous approval of the public."

These events did, in fact, take place as described, but they all happened after the story appeared in print. The trial was set to start on Jan. 6, but was postponed to Jan. 16. The Moscow editor was not alerted of the delay and released the report. When the trial opened, people coming into the courtroom carried with them the verdict in print.

Needless to say, this conviction violates the U.S.S.R. constitution. The reporter was tried, found guilty, and given one year's hard labor, and another edition of Soviet Legality appeared with the details deleted.

So it is within the state-controlled legal system that the political aims of the state find their logical outlet. But Izvestia's candid comment that links "the interests of the state" with "war criminals" supplies no further details.

One source that inadvertently sheds light on Soviet goals is Allan Ryan's book, Quiet Neighbors: Prosecuting Nazi War Criminals in America. The negotiations on evidence took place a month after the Soviet invasion of Afghanistan, but their tone was unusually cordial. In fact, says Ryan, a consular officer that accompanied him "shook his head in disbelief. He had never seen a Soviet official discuss any matter with such directness and candor." The OSI director dubbed the



Soviet tanks enter Prague, Czechoslovakia in 1968. Moscow says many "war criminals" fled from Eastern Europe

Soviet "evidentiary material" has become the subject of a major controversy. It has been impugned as highly questionable and politically motivated.

agreement as a "wildly improbable marriage" and marvelled at the Soviets who "asked nothing of us in return for their assistance." Ryan had obviously not heard of the mass of the victims U.S. negotiator George Kennan that things go well only when the Soviets want something.

The irony of Ryan's assessment becomes clear in the rest of the book where one can find the same themes of Soviet state interests. Put another way, the Soviets got a good bargain: a revised version of Baltic history, and support for the Soviet claim that refugees from Eastern Europe are "Hitlerites" and that their opposition to communism is a "camouflage" to hide their former collaboration with Nazis.

The book is full of innuendoes against Ukrainians and Baltic refugees. The displaced persons camps in Germany where they lived are said to have had in them "everything ... except Hitler." They were "infested with Nazi collaborators" who, after the war, "literally and figuratively threw off their Nazi uniforms" and "ingratiated themselves" to the Allies. Then they came to America as "booted after bootload" — less than good, in fact.

When Ryan talks of the Soviet seizure of the Baltic States in 1940, he puts quotation marks around "forcibly incorporated," but leaves them off when he refers to the Great Patriotic War, a standard in Soviet propaganda. He adds in a footnote that "the State Department clings to the fiction that the Baltic republics are independent," even though the United States has never recognized their illegal occupation. In a book that deals with the complex theme of war criminals, one would expect a complete treatment of the war. Ryan's fore-shortened history of the Baltic area begins with the invasion of Soviet-occupied Lithuania on June 22, 1941, which Ryan now calls the "invasion of the Soviet Union." There are no references to the Hitler-Stalin pact of Aug. 23, 1939, or the protocol that put Lithuania, Latvia and Estonia "into the U.S.S.R. sphere of influence," or the Red Army invasion of the Baltic states and the mass killings and deportations that followed. There is no mention of the Great Famine of 1933 when Stalin systematically starved and terrorized to death seven million Ukrainians, or that five million more died in the Nazi holocaust, or that the Ukrainian resist-

ance was on a par with the celebrated French underground. Nor is there any mention of the second and continuing illegal occupation of Eastern Europe and the severity of the present cultural, national and religious repression. These are all basic facts in any assessment of Soviet motives in Eastern European affairs.

The refugees from Eastern Europe are the last surviving witnesses of the war crimes that the Soviets themselves committed and the last claimants to the territory the Soviets seized by force. The refugees are also a powerful voice in the western world and a constant reminder of the goals of Soviet colonialism.

In the search for Nazi war criminals, therefore, the Soviets have seen and seized an opportunity to advance their interests in eastern Europe at little political risk to silence and to suppress the refugees as "Hitlerite bourgeois reactionaries," to revise history so that all war crimes become Nazi war crimes, and to solidify territorial claims in the Baltic states.

To cover this unadmitted political self-interest, the Soviets have joined the Nazi hunt with the search for world peace. In recent Soviet press articles the "Hitlerites" and their "Fascist organizations" are invariably seen as a "threat to peace, a threat to the security of nations." In Moscow, Ryan was reminded that the Soviet Union and the U.S. were "allies still in this important work" of prosecuting "Hitlerites," a line again repeated in Ottawa by Alexander Podolski.

THIS MESSAGE HAS not been lost on some American press commentators. Walter Ruckel, writing in the Washington Post (April 23, 1985) also finds a "reservoir of lunacy" in the historic struggle against the Nazis that might now be put to use. He suggests that, as a gesture of goodwill, "former Nazi collaborators" who were "born in what is now the Soviet Union," be deported to the USSR to improve the climate at the Geneva arms talks.

Like the Soviets, Ruckel ingenuously combines politics and justice. Deportation of alleged war criminals becomes a peace offering and arguments against Soviet evidence a threat to détente. But to accept this point of view is to make the whole issue of evidence, not just Soviet evidence, irrelevant.

Although Ryan says that the "Nazis ... arraigned in Moscow were out of sympathy well," the procedure for taking testimony in the Soviet Union have come under strong criticism. Since all depositions are conducted in Soviet courts under the auspices of the KGB and the Central Committee of the Communist Party, no U.S. defence lawyers find the arrangement repugnant. Paul Zumbach, Chicago lawyer, in a recent memorandum to the U.S. Immigration Commission says that "allowing the KGB, through Soviet procurators under their control to supervise and produce over evidence depositions taken expressly for use in U.S. courts is as repulsive to our sense of justice as would be the lack of depositions under Gestapo supervision in Nazi Germany."

Beyond procedure and politics, however, is the moral argument of legal respectability to a judicial system that has been, and is a willing instrument of a repressive regime. The man who won the American agreement to let Moscow's evidence be themselves given testimony justice and structure, procurator general of the U.S.S.R. G. Roman Rudenko, who pressed "coastal presence" so impressed Ryan. The same Rudenko who, on Aug. 1983 at the Voronezh Court 23, gave orders to shoot at striking political workers. Rudenko's deputy, Alexander Rukhsarov, while negotiating with OSI, read the exile decree to And Sakharov and beset him to come to OSI proceedings in Lithuania as Juris Baldersons. He is also responsible for sending every major Lithuanian religious and political dissident, the prison camps.

Above all, the Soviet regime has never acknowledged the killing of millions of defenceless people on its own and its neighbor's territory. If the prosecution of surviving Nazis is to proceed unblemished, it should not enter into a partnership with men who have never brought their own war criminals to justice and are using genocide as an instrument of state policy. If we are out to redress one of the greatest evils in history, can we blind ourselves to another evil that was just as great?

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Soviet silence keeps Nazi inquiry on hold

By Ron Vastokas

On Nov. 14, 1985, Justice Jules Deschênes announced that his Commission of Inquiry on War Criminals would seek evidence in the Soviet Union on eight suspected Nazi war criminals in Canada.

The decision ended nine months of controversy between those who warn that Soviet evidence is defective and politically motivated, and those who argue that evidence should be collected everywhere and then sorted out.

But the trip to Moscow still depends on whether the Soviet Union accepts the "basic precautions" set down by Deschênes for the gathering of evidence abroad: protection of reputations through confidentiality, independent interpreters, access to original documents, access to witnesses' previous statements, examination of witnesses in agreement with Canadian rules of evidence, and videotaping of the examinations.

To date, the Soviet Union has not replied. This silence should now be read as a sign that it has found the conditions unacceptable. But if there is a positive reply, it will probably come close to the end of the commission's mandate, in June. By that time, the commission will not have time for a trip to the Soviet Union, and the promise of co-operation will never have to be put to a test.

An explanation for the Soviet Union's reluctance to reply lies not so much in the conditions it has been asked to "accept and observe" as in the risk it would run in jeopardizing the arrangements it now has with the Office of Special Investigations in the United States. The OSI, set up in 1979,

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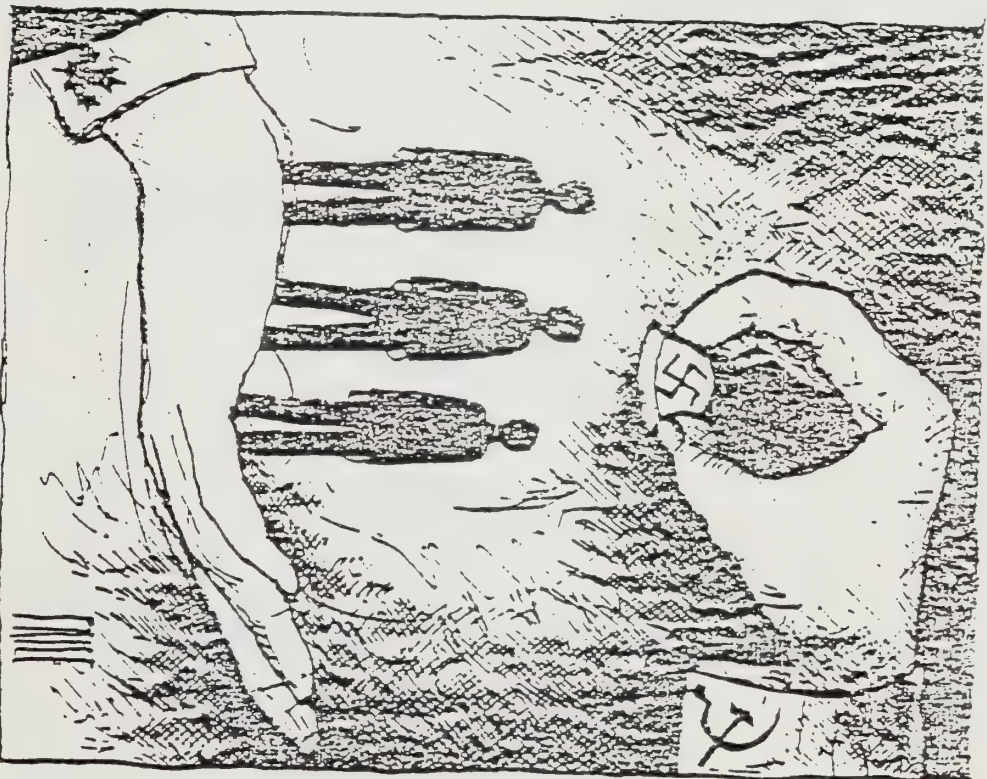
investigates and prosecutes alleged Nazi war criminals in the U.S.

The way in which the OSI gathers evidence in the Soviet Union has come under strong criticism in precisely those areas addressed by the safeguards of the Deschênes commission. At present, all OSI depositions are conducted in the Soviet court system under the auspices of the Central Committee of the Communist Party and the Committee for State Security (KGB), and all witnesses are questioned under Soviet criminal law.

In all cases, a Soviet prosecutor presides over the taking of testimony, conducts the proceedings and determines the extent of cross-examination. The translator is always provided by Intourist, an agency under the Second Chief Directorate of the KGB.

The overwhelming presence of Soviet authorities at the depositions, the restrictions on all documents concerning war crimes, and access to "only those witnesses obtained and controlled by the Soviet government" have led one U.S. judge to conclude that such circumstances do not "easily square with accepted concepts of due process of law" and deny the "opportunity to conduct even a primitive preparation of a defence" (U.S. vs Kowalczyk, 1985.)

But shortcomings in the OSI procedures are not the only concern of the commission's safeguards. There is another common thread in the arguments against Soviet evidence: The Soviet legal system is an arm of state policy. This historic link between law



and politics has been acknowledged by the Soviets. In an article on the hunt for Nazis, the state newspaper Izvestia said: "The interests of the state dictate all of the work in the search for war criminals." (Feb. 25, 1983)

Deschênes himself has commented on this aspect of Soviet

legality. In 1977, he said that, in Eastern Europe, "justice based on objective juridical criteria no longer exists. Civil and criminal justice has come to depend on faithfulness to the party line."

The commission safeguards, therefore, aim to remove the "interests of the state" from the

courtroom and to ensure access to all available evidence. But they also present the Soviets with a dilemma: Either establish two sets of procedures, with the more stringent standards for Canadian cases, or bring the working arrangements with the OSI into line with the new safeguards. In either case, there are political penalties: The Soviets would lose much of the control they now have over OSI depositions, and the Americans would expose their own procedures as defective.

When Allan Ryan, the former OSI director, struck an agreement in Moscow in 1980 to use Soviet evidence, he was given "full assurances of co-operation." But an official also asked that there be "no formal communication concerning our negotiations or our agreements." Ryan agreed and entered the following in his memoirs: "We would simply work together and do what had to be done."

Since then, the OSI has never been willing to disclose the terms of the agreement and, in spite of Ryan's commitment to "due process of law above every other consideration," actual practice has fallen far short of intended procedures. Because of the secrecy that shrouds their relationship, no one can tell at present whether the OSI has lowered its standards or the Soviets have broken their promises, or both.

The Canadian commission's clear and public statement that its conditions must be "accepted and observed" in any working relationship, puts the Soviets and the OSI in a quandary. And it leaves Deschênes waiting for an answer.

COMMISSION OF INQUIRY

ON WAR CRIMINALS

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SUBMISSIONS OF The Ukrainian Canadian Committee

May 5, 1986

JOHN SOPINKA, Q.C.

Counsel for The Ukrainian Canadian Committee

* * * * *

serious objections as to its capacity to withstand a challenge based on the Charter of Rights.

(iv) changes to current law

From my review of the existing legal framework, it is apparent that of all of the remedies suggested, only extradition to the Federal Republic of Germany or another West European country appears to be available as a means of bringing to justice a suspected Nazi war criminal. Whether any further remedies are required would depend on the evidence which the Commission has heard in camera. For example, if most or all of the suspected war criminals presently resident in Canada are former German military officers whom the F.R.G. could be expected to extradite, then the problem would be largely resolved. There is no question that the law, as it presently stands, is able to ensure that justice is meted out to the masterminds of Nazi atrocities such as Joseph Mengele.

If your investigations have revealed only a relatively small number of suspects, and if the actions attributed to them do not constitute major war crimes but may well be actions on the borderline between legitimate warfare and illegitimate warfare, and especially if any subsequent proceedings would need to place any significant reliance upon Soviet-supplied evidence, it is my submission that it would be more advisable for the Commission to recommend that no new legislation be introduced. This would, in my view, be preferable to the risks which are inherent in some of the other courses of action which have been recommended. One must not be blinded by the understandable desire to do justice and see that responsible culprits are punished. This cannot be used as an excuse for trampling upon the rights and

freedoms of Canadian citizens and risking the setting of a precedent for the future. For example, if the rules are successfully bent today to permit denaturalization and deportation or extradition of suspected Nazi war criminals to the Soviet Union or other East Bloc countries despite the potential injustice which this would cause, a precedent could well be set for future actions against other categories of citizens.

Even if some action was warranted, I would submit that the Commission should strongly recommend against the establishment of a Canadian equivalent to the O.S.I. The O.S.I. in the United States has been the source of the creation of considerable friction between ethnic communities. If in fact your investigation has revealed that, far from there being 3,000 or more suspected Nazi war criminals in Canada there are only a handful, (if any) there can be no justification for establishing an exceptional prosecution arm of the state. Rightly or wrongly, the O.S.I. has caused many ethnic groups to feel that they are being persecuted. They feel that they are being singled out for attack and that their good name in the community is being besmirched by association with the Nazis. Whether rightly or wrongly, they feel that the O.S.I. has permitted itself to become an instrument of the K.G.B. It does not really matter whether the apprehensions of the ethnic communities in the United States are justified. If the problem of Nazi war criminals in Canada has not been found to be widespread by your Commission, then I would submit that there is no real benefit which can be gained by establishing an O.S.I. in Canada and yet there are very real disadvantages associated with such an institution. The problem would be of a magnitude that could be handled by existing institutions. I would refer you to the brief of Mr. Zumbakis which has been filed with these

submissions for further discussion of the potential damage which an O.S.I. can do to the case of ethnic harmony.

Your Commission has thoroughly investigated the existence of suspected Nazi war criminals in Canada. Any information which you have gathered can be turned over to the police and handled in the normal course. An O.S.I. is not necessary in order to track down any new Nazi war criminals who should surface since it is not likely that many new immigrants will be of an age and an ethnic background which might warrant their being suspected of being Nazi war criminals.

If your Commission has determined that the extent of the problem warrants new legislation to deal with Nazi war criminals resident in Canada, it is my submission that any new legislation must be applicable to all war criminals without discrimination. However, in view of the limitations placed upon the scope of your inquiry by the Order-in-Council, it is my submission that the Commission has not heard sufficient evidence to enable it to say what type of legislation would be desirable.

It is my submission that any war criminal legislation cannot distinguish between war criminals based upon the war in which they committed their crimes or the side upon which they fought. If such distinctions are drawn, it is my submission that the legislation would be open to challenge under Section 15 of the Charter.

Surely it must be true that war crimes do not become more or less reprehensible based upon the time in which they are committed or the cause which they are committed for. If war crimes are to avoid the label of being

political crimes, their criminal nature should not depend upon the nationality of either the perpetrator or the victim of the crime. It is submitted that there is no non-discriminatory basis upon which the State could decide to prosecute only one type of war criminal. A decision to prosecute only Nazi war criminals would be open to the charge of discrimination based, inter alia, upon race or national origin.

The so-called Finestone amendment to Bill C-18⁴⁴ would appear to be an amendment to the Criminal Code which would be able to withstand a Section 15 attack. It applies equally to all war criminals. It is the sort of amendment which the Ukrainian Canadian Committee would be prepared to consider supporting. As far as can be seen, the ordinary rules of evidence and criminal procedure would apply to a prosecution under the proposed amendment to the Code.

However, an amendment of the scope of the Finestone amendment has not been investigated by this Commission. Such an amendment falls outside the terms of reference of the Commission. The Commission has not heard evidence upon the advisability or desirability of bringing to justice war criminals of all types. For example, is it possible to argue that Canadians or Americans involved in the carpet bombing of such German cities as Dresden should be now sought after and prosecuted as war criminals? Many Canadians and Americans who are resident in Canada fought in the war in Vietnam. I would not presume to comment one way or the other on whether it is an advisable public policy to prosecute such people. It may well be. The point which I would make however is that this is not a problem which has been the subject of extensive debate or inquiry by this Commission. The Commission does

not have the information necessary to make a considered recommendation on this point.

In summary, I would submit that your report should indicate that the evidence which you have heard does not show that Ukrainians in the various Ukrainian nationalist groups which have been discussed were involved in war crimes related to the activities of Nazi Germany. Your report should describe the extent of the problem of Nazi war criminals as has been revealed to you by the evidence which you have heard. In recommending means of bringing such Nazi war criminals to justice, I would recommend that you note the availability of extradition to the Federal Republic of Germany, and the fact that any further action would have to be taken on a non-discriminatory basis. Upon the information available, I submit that you should refrain from recommending any changes to current legislation until an adequate investigation of the whole problem of war crimes without distinction based upon nationality has been carried out.

Position on War Criminals

The Ukrainian Canadian Committee's ("UCC") position relating to war criminals is set out below.

- 1.1 The UCC believes in and supports fairness and even-handedness as the basis of Canadian society.
- 1.2 All alleged war criminals from any area and any time residing in Canada should be identified and prosecuted in Canadian courts to the fullest extent of Canadian law.
- 1.3 The presumption of innocence and all other protections guaranteed under Canada's system of criminal law and constitution should apply in any such proceedings.
- 1.4 Lowering of standards of proof of evidence of war crimes in judicial proceedings would be a corruption of the Canadian legal system and destructive of the safeguards of Canadians against arbitrary action by governments.
- 1.5 The use of denaturalization and deportation proceedings to prosecute alleged war criminals because insufficient material existed to warrant prosecution as a war criminal would be debasement of the Canadian legal system.

- 1.6 The terms of reference of the Commission of Inquiry on War Criminals (the "Commission"), by dealing with restricted political, spatial and human aspects offend against the Canadian policy of fairness.
- 1.7 Deceit is an integral part of the Soviet and East European Communist regimes' ideology and practice. No material and witnesses proffered by the Soviet government can be relied upon to be true.
- 1.8 The Soviet Union's and East European Communist regimes' judicial systems implement the ideology and practice of deceit. No material, conclusions or findings of the Soviet judicial system can be relied upon to be true.
- 1.9 The lack of knowledge of the ideology and practices of the Communist regimes of Eastern Europe and the judicial systems by the judiciary and bar of Canada would lead to miscarriages of justice if materials and witnesses from the Soviet bloc were allowed.
- 1.10 The Commission is not authorized by its terms of reference and, accordingly, precluded from supplying names of alleged war criminals to the government.

- 1.11 The Ukrainian Insurgent Army, The First Division, Ukrainian National Army, and the Organization of Ukrainian Nationalists were organizations whose purpose and operations were to protect Ukrainians against German and Russian aggression and to advance the cause of Ukrainian freedom. Membership in these organizations is not evidence of war criminality.
- 1.12 As it is manifest that fair trials are not available in Communist bloc countries, requests for extradition to those countries should not be honoured.
- 1.13 The UCC opposes the subversion of the Canadian system of justice by the implementation of a special system modelled on the Office of Special Investigations of the United States of America.
- 1.14 The UCC adopts the analysis and conclusions of the Discussion Paper titled "Alleged War Criminals in Canada" Serial No. JUS-03-81-DP.

The questions put to the Commission of Inquiry on War Criminals in its terms of reference should be answered by the Commission as follows:

2.1 Question: "...whether any such persons are now resident in Canada..."

Answer: "Yes" or "No".

2.2 Question: "...what further action might be taken in Canada to bring to justice such alleged war criminals who might be residing in Canada, including recommendations as to what legal means are now available to bring to justice any such persons in Canada or whether and what legislation might be adopted by the Parliament of Canada to ensure that war criminals are brought to justice and made to answer for their crimes".

Answer: "The questions asked require an analysis of all war crimes in all areas of the world to be properly answered. As the Commission was restricted to a narrow time, geographic and political frame, it cannot properly answer the questions".

Los Angeles Times

Sunday, April 27, 1986

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But Troubling Legalities Are Raised

Soviet Proof Key in U.S. Nazi Cases

By ROBERT GILLETTE, Times Staff Writer

WASHINGTON—In January, 1980, when the United States was angrily imposing economic and diplomatic sanctions on the Soviet Union for the invasion of Afghanistan, representatives of the U.S. Justice Department were quietly negotiating an unprecedented agreement for cooperation with their counterparts in Moscow.

In three days of amicable talks, the Justice Department reached an agreement with Alexander M. Reukhkov, now the Soviet Union's highest legal officer. The agreement called for Moscow to assist the United States in prosecuting Soviet refugees who had fled at the end of World War II and who were now, as naturalized Americans, suspected of murdering or persecuting civilians during the Nazi occupation.

Under terms set largely by the Soviet side, Soviet judicial authorities agreed to supply documents and eyewitness testimony to the

It was to be, as Ryan observed, a "wildly improbable marriage" between the judicial authorities of a democracy and those of a "totalitarian regime," who evinced "no hint that they understood what we were talking about" when the Americans tried to explain the basic concepts of due process that Westerners consider essential to a fair trial.

Just how improbable the marriage—and how nettlesome the legal issues raised by the U.S.-Soviet agreement—has become clear since.

Please see JUSTICE, Page 30

First of two parts.

Justice Department's newly created Office of Special Investigations. The office's mission was to ferret out suspected war criminals and persuade the courts to revoke their citizenship and deport them. But, to accomplish this, the bulk of evidence would have to come from the Soviet Union.

"Winning the cooperation of the Soviet Union was a critical step in our plans for OSI," its former director, Alan A. Ryan, Jr., observed in his 1984 book, "Quiet Neighbors." Almost all the refugees now under suspicion of war crimes had come from the Soviet Union. Captured German documents bearing on their ties to the Nazi occupiers were held in Soviet archives.

"We also needed witnesses to atrocities: bystanders, colleagues, victims, neighbors," Ryan said. "Some of these, particularly victims, we might find in America or Israel or Canada, or elsewhere in the world. But most of the neighbors and bystanders had never left home. . . . If we were to have their testimony, we needed the permission of their government."

Nothing in Writing

To ensure a proper atmosphere for the talks, the Justice Department representatives ignored a State Department request to register Washington's strong disapproval of the Afghan invasion. To the Justice Department's surprise, the Soviets asked nothing in return for supplying the evidence the Americans wanted. But there was to be no formal written agreement, only an oral understanding, making this a unique arrangement between the two superpowers at a time when relations in every other field were rapidly deteriorating.

Continued from Page 1

"Six years later, the Office of Special Investigations has won broad public approval for its aggressive pursuit of alleged war criminals. According to the agency's figures, 19 naturalized Americans have been stripped of their citizenship and nine deported—one so far to the Soviet Union—while another 35 cases are currently in the courts and 300 investigations are under way.

"Soviet evidence has played a major role in these cases, often with little corroborating evidence from other sources.

Ethnic organizations of Baltic and Ukrainian nationalities, joined by some conservative political groups, have bitterly protested the use of this evidence, condemning it as inherently untrustworthy.

The Office of Special Investigations, strongly supported by the American Jewish community, dismisses such criticism as reflexive anti-communism tinged with anti-Semitism and motivated by a thinly veiled desire to protect war criminals.

"No American judge has concluded that any documentary evidence obtained from the Soviet Union was fabricated," the Anti-Defamation League of B'nai B'rith said in a 40-page defense of OSI published last June. "Nor has any witness made available by the Soviet Union been found to have lied in connection with his or her testimony."

Over the last three years, however, largely without public notice, a number of federal court jurists and defense lawyers have voiced serious misgivings about the use of Soviet evidence, especially witness testimony, in American courts.

Unworthy of Belief

Although in the majority of cases federal courts have accepted it as valid, there are at least four cases in which judges have rejected Soviet testimony entirely or in part as seemingly coerced or invented, or for other reasons "not worthy of belief," as one appellate opinion phrased it.

In addition, a committee of the American Bar Assn. has considered a recommendation to organize a formal study of the problems raised by the use of Soviet evidence but so far has taken no action on the proposal.

As the critics in the legal community see it, the troubling feature of OSI's war crimes cases is not only that they center on events distant in time and place, and deal with the highly emotional question of complicity in the Holocaust, but that they rest to a major degree on the acceptance by American courts of evidence compiled by the KGB security and intelligence agency and selectively supplied to the Justice Department.

Reliability Question

They question whether the U.S. government, and, more important, the courts, can reasonably expect to use such evidence to tell the guilty from the innocent. As a memorandum circulated in recent months in the American Bar Assn.'s committee on law and national security said: "Is the evidence made available by the Soviet Union reliable, and does the getting and use of such evidence conform to due process standards?"

The ABA memo drew no conclusions but recommended that a blue-ribbon panel be convened to study these and related questions.

Concerns expressed in a number of federal court opinions, and by individual lawyers in a series of interviews, are both political and procedural.

For example, the So-

viet Union's long history of bending justice and inventing evidence to suit its political aims, from the theatrical show trials of old Bolsheviks in the 1930s to the trials of Anatoly Shcharansky and other human rights activists in the 1970s and 1980s.

JUSTICE: Misgivings Voiced About Soviet Proof

voice of injecting "political bias" into his decision and went on to assert.

"While the Soviet Union may act with impunity in legal proceedings confined to its own borders, it cannot do so in cases under the scrutiny of foreign judges, lawyers and witnesses."

Successful fraud by the Soviet Union in these matters, the OSI argued in its appeal, "is beyond its capabilities" and in any case would be "inevitably doomed to exposure."

Asked in an interview whether this was not, in effect, an assertion of infallibility on the part of the American judicial system, Sher said it was not. "It is just an assertion of complete faith in the ability of our courts to ascertain the truth," Sher said.

Illogical Premise

He added that it would be illogical for the Soviets to risk destroying the credibility of all the evidence they supplied by tampering with some of it for propaganda purposes.

The agency's critics, on the other hand, argue that it fails to recognize the ease with which Soviet witnesses can be manipulated, perhaps because excessive zeal has clouded its judgment.

"The Soviets have everything they need—the motive, the experience, the control—to create staged cases," John Rogers Carroll, a Philadelphia trial lawyer, said in a recent interview. Carroll defended Kowalchuk, a Philadelphia tailor who now faces deportation to the Soviet Union.

While the role of eyewitness testimony varies among OSI's cases, it dominates the Kowalchuk case, where, as a district court noted, "there is . . . not one scrap of documentary evidence relating to the pertinent events."

Carroll said his experience in two evidentiary hearings in the Soviet Union in 1981 and 1983 convinced him that cross-examination of witnesses under Soviet control "has little effect on someone who knows

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more than 100 Soviet witnesses.

In Canada, where a royal commission has spent more than a year determining whether, or how, to conduct its own investigation of suspected war criminals, misgivings about the use of Soviet evidence are shared by some members of Parliament.

"The American approach is totally inadequate," Andrew Witer, the chairman of a newly formed parliamentary committee on human rights, said in a recent interview. At a minimum, Witer said, Soviet witnesses should be interviewed in a "non-prejudicial" set-

In the case of accused American war criminals, the critics believe, the Soviet aim is not only to bring a small number of bona fide murderers to justice but to tar traditionally anti-communist emigre communities in the United States as broadly as possible with the same brush. The Soviets, the critics say, want to stir dissension among emigre

'The government must take whatever steps are necessary to ensure evidence was not coerced.'

groups and to blacken them in the eyes of Soviet citizens.

In a strongly worded dissenting opinion in the case of Serge Kowalchuk, 65, a Ukrainian-born emigre stripped of his citizenship for working as a clerk in a Nazi-controlled police unit during World War II, Chief Judge Ruggero J. Aldisert of the 3rd Circuit Court of Appeals wrote last September:

"The government's case is based on evidence procured by the KGB to effectuate its political ends. Congruence between that purpose and individual justice has yet to be established."

Few if any critics in the legal community suggest that all Soviet evidence is tainted. The problem, they say, is to distinguish between testimony that is genuine, embellished or simply invented, and to recognize when documents have been selected from the archives, omitting those that might exonerate a defendant or mitigate the charges against him.

Denial of Access

Under the terms of the 1980 agreement, this has not been an easy task. The Soviets have refused to give OSI prosecutors or defense attorneys access to wartime archives to search for other evidence that might bear on a defendant's guilt or innocence. Lawyers, and some federal courts, have objected that these restrictions make it almost impossible to guarantee a defendant's due process right to a meaningful defense.

In addition, the Soviets strictly control the Americans' access to witnesses.

Their testimony is videotaped for use in American courts. U.S. defense lawyers have the right to cross-examine the witnesses, and OSI will even pay the lawyers' travel expenses to the Soviet Union. But, in all cases, Soviet prosecutors supervise the taking of depositions, frequently seek to restrict cross-examinations and often urge the witnesses to adhere to written summaries or "protocols" of their earlier interrogations by the KGB.

Despite OSI's initial hopes in 1980, no Soviet witness in a war crimes case has yet appeared in an American court, although some have traveled to West Germany to testify in other cases.

By contrast, Poland, where most of the Nazi extermination camps were located, has imposed no such restrictions on access to official archives or witnesses.

However, the OSI's cases have led the agency to depend far more heavily on Soviet evidence than on Polish. It has taken testimony, for instance, from fewer than half a dozen Polish witnesses since 1980, but in the same period has inter-

viewed such as an embassy, out from under the gaze of a Soviet prosecutor.

Despite the procedural controls imposed by the Soviets, the Office of Special Investigations dismisses fears of false or distorted evidence, or an abrogation of due process, as illogical and unfounded.

"As a practical matter, it is difficult to conceive of even the KGB—or anyone else for that matter—fabricating document after document and suborning perjury from witness after witness in every one of OSI's cases," the agency's current director, Neil M. Sher, said.

Pending Appeal

The OSI put this viewpoint even more categorically in an appeal currently before the 3rd Circuit Court in the case of a naturalized Lithuanian named Juozas Kungys. A federal district court exonerated Kungys in 1983 of charges that he took part in killing Jews during the Nazi occupation, and rebuked the OSI for failing to ensure that Soviet witnesses in the case had not been coerced.

In its appeal, OSI accused U.S. District Judge Dickinson R. Debe-

Los Angeles Times

A Times Mirror Newspaper

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Times Mirror Bureau / Los Angeles
Circulation 80063

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that all he has to do is stick to his story and he won't get into trouble."

"He (a witness) knows I can't go into his story, investigate the details," Carroll said. "He won't be prosecuted for perjury. He knows that none of the normal sanctions (against false or misleading testimony) apply here."

Between 1983 and last year, at least four federal district and appeals courts have rejected such testimony as seemingly coerced, as precluded by the remarks of Soviet prosecutors or for other reasons as

untrustworthy. In other cases—most notably Kowalchuk's—dissenting opinions have voiced grave concern that the use of unverifiable Soviet evidence jeopardizes a defendant's constitutional right to due process.

In May, 1984, a federal district court in New York cited concerns about coerced testimony in dismissing an OSI suit to revoke the citizenship of Elina Spigola, a former Latvian police officer the Soviets accused of having murdered and persecuted Jews during the German occupation. The action depended heavily on the

videotaped testimony of two Soviet witnesses whose behavior, according to Judge Frank X. Altman, suggested coercion.

At one point, Altman noted, a key witness, when offered an opportunity to rest during his testimony, inexplicably began to cry. "Whether it be due to coercion, discomfort, fear, old age or other factors, (the) counsel in favor of the OSI must be careful of his testimony," Altman wrote in his decision.

In May, 1985, the 2nd Circuit Court of Appeals upheld the dismissal of the case, noting that Altman had acted properly in

rejecting the Soviet testimony as "potentially coerced" and "unworthy of belief."

Four months later, on Sept. 6, Spigola, 70, narrowly escaped injury when a bomb exploded at his home in Brentwood, N.Y. The Federal Bureau of Investigation has said that this and a similar bombing three weeks earlier in Paterson, N.J.—which killed a naturalized Ukrainian who had been cleared by the OSI—may have been carried out by the militant Jewish Defense League.

The similar case of Edgars Laipeniks, a former professor of

physical education at the University of Denver, illustrates the important role a judge's subjective impressions and instinct play in gauging the credibility of Soviet witnesses from a videotape. In Laipeniks' case, these impressions varied greatly from one court to another.

A local police chief in Nazi-occupied Latvia, Laipeniks was accused not of complicity in the Holocaust but of beating Communist prisoners in his jail. In 1981, the OSI sought to deport him to the Soviet Union.

The government's case turned

on the testimony of nine Soviet witnesses. An immigration court judge rejected it as untrustworthy, citing what he called an intimidating atmosphere highlighted by a Soviet prosecutor who curbed cross-examination of the witnesses and repeatedly described Laipeniks in front of them as "the Nazi war criminal."

The Board of Immigration Appeals, however, found the testimony sufficiently valid to reverse the decision and order Laipeniks deported. Then in January, 1985, the 9th Circuit Court of Appeals for

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JUDICIAL MAJOR NOIR Played by Soviet KGB

(Continued from Page 31)
face of Soviet controls on access to evidence.

The OSI sought to revoke Kowalchuk's citizenship on the ground that he had concealed membership in a Nazi-controlled police force in the Ukraine that would have made him ineligible for a visa, and also that he took part in the murder of Jews in the town of Lubomyl.

A district court was skeptical of Soviet evidence that Kowalchuk took part in persecutions and atrocities, but ruled that his citizenship was nevertheless obtained by fraud and ordered it revoked.

Reversal Reversed

A three-judge panel of the 3rd Circuit Court reversed this ruling on a vote of 2 to 1; then the full 3rd Circuit, on its own motion, reviewed the case again en banc.

Last Sept. 23, the full court decided 8 to 4 to revoke Kowalchuk's citizenship after all. This February, the Supreme Court turned down his request for review, opening the way to Kowalchuk's eventual deportation to the Soviet Union.

In rejecting Kowalchuk's argument that Soviet restrictions denied him access to archives and possible witnesses, the majority noted that "Soviet Russia also imposed the same limitations upon government counsel."

In any case, it said, whether or not Kowalchuk took part in persecutions, he had given "voluntary assistance to enemy forces" by working as a local police clerk and was therefore ineligible for U.S. citizenship.

In a sharply worded dissenting opinion, Chief Judge Aldisert wrote that, in fact, a "compelling" violation of Kowalchuk's right to due process lay at the heart of the case.

"For reasons I refuse to recite as

Identified With the Enemy

Hordes of Soviet Rebels Joined Invading Germans

By ROBERT GILLETTE, Times Staff Writer

From the viewpoint of most Americans, active collaboration with Nazi Germany during World War II carries an indelible stain of moral repugnance. Those who aided the enemy in wartime tend to win little sympathy in peacetime, whatever their motivation.

But in the Soviet Union, which bore the brunt of the war with Germany, collaborators appeared on a scale unequalled in modern times, as huge numbers of non-Russian ethnic minorities, joined by smaller numbers of Russians, seized what they perceived as a chance for liberation and independence.

Major Contribution

According to a 1982 study by the Rand Corp. between 600,000 and 1.4 million able-bodied men in the Soviet Union's occupied western territories and the Baltic states of Estonia, Latvia and Lithuania voluntarily joined German military forces. Together, they made up 20% or more of total German forces on the Eastern Front and made a major contribution to the German war effort.

Returned to Serfdom

Beginning in 1930, Stalin's program of forced collectivization created vast state-run farming complexes from small private landholdings and returned 20 million peasants, in practical terms, to the serfdom of a century earlier.

By conservative estimates, the resulting famine of 1932-33, exacerbated by drought and the wholesale slaughter of the kulaks—the more successful peasants—claimed 3 million lives in the Ukrainian breadbasket alone. Another 10 million or more perished in Soviet labor camps during the sustained terror of the 1930s.

To these casualties were added the mass executions and deportations that followed the Soviet Union's annexation of a quarter-million square miles of territory inhabited by 23 million people

from the Baltic to the Black Sea in 1939-40 under the terms of Moscow's short-lived alliance with Nazi Germany.

Before the German invasion of June, 1941, temporarily evicted the Soviets from these new territories, tens of thousands of Baltic civilians were deported to the Arctic north, Siberia and Central Asia. From eastern Poland alone, the Soviets shipped 2 million men, women and children to the east in cattle cars under appalling conditions. One million survived the ordeal to return home after the war.

Enthusiastic Welcome

This legacy, the Rand report observed, "helped prepare a political climate in which a majority of the population came to identify its hopes and political aspirations with the invading foreign power." As German forces penetrated farther east in 1941 and 1942, they found a generally friendly reception from local nationalities. In Cosack and Kalmyk lands, where the Germans allowed churches and mosques to reopen, the "welcome was truly enthusiastic," the report noted.

Captured German documents record a local feast in the north Caucasus city of Huchik in 1942 in which a grateful Muslim populace presented 1,000 head of cattle to the German commander and a gold-embroidered saddle for Hitler.

As the full scope of Nazi brutality became apparent, and the Red Army's combat morale stiffened, popular support for the Germans waned. A former Soviet official, interrogated by the Germans, summed up the invader's declining pros-

pecta this way:

"We have badly mistreated our people—in fact, so bad that it was almost impossible to treat them worse. You Germans have managed to do that. In the long term, the people will choose between two tyrants the one who speaks their language. Therefore, we will win the war."

With the collapse of the German Army in 1943 and 1944, large numbers of Soviet volunteers joined ordinary civilians streaming west, where they settled initially in refugee camps under the bureaucratic rubric of "displaced persons."

Visas to U.S.

About 400,000 eventually obtained visas to emigrate to the United States, but the rules of admission were explicit. While the Western powers had followed the rule that an enemy's enemy is a friend in allying themselves with the Soviet Union after June, 1941, Soviet citizens who had followed the same formula in joining German forces were barred by law from entering the United States.

In addition to prohibiting those who "assisted the enemy in persecuting civil populations," the Displaced Persons Act of 1948 also barred anyone who "voluntarily assisted the enemy forces . . . in their operations against the United Nations." Many—perhaps several thousand—who fell into one of these categories nevertheless managed to emigrate to the United States by concealing their wartime activities

what he called their "extreme deference" to the presiding Soviet prosecutor, "who was nothing more than their partner in the prosecution of this case."

Debevoise gave particular weight to testimony by a former Soviet prosecutor, now living in the United States, who explained how witnesses are commonly manipulated in Soviet courts.

The former prosecutor, Frederick Nemansky, acknowledged that many witnesses are truthful and that many investigations are honestly conducted. But he said that when the evidence fails to support the desired result, there is intense pressure from prosecutors and judges alike to remold it.

"The way it's explained to a witness is often very lofty," Nemansky said. "The accused is a criminal against the Communist Party, against the state, and is probably a parasite and an enemy of the people. So it is the civic duty of the witness to testify in the appropriate way."

Latvian KGB Defector

Failing this, he said, "sometimes they (witnesses) are threatened. Not in a serious way, but people could be told they will be fired (from their jobs) if their testimony is not appropriate."

Similarly, a former officer in the Latvian KGB who defected to the United States in 1978, Imants Lesniskis, said he found that witnesses in war crimes cases with which he dealt as a propaganda officer were often totally compliant.

"They had been in Soviet (labor) camps for many years and they were afraid to go back. So if you asked them the right questions, they confirmed all," Lesniskis said.

While these cases focused mainly on the trustworthiness of Soviet evidence, a dissenting opinion in the widely publicized Kowalchuk case stressed the issue of a defendant's right to due process in the

gled out American citizen Serge Kowalchuk for immediate attention by our government, in a stream of extravagant accusations subsequently not proved in district court," Aldisert wrote in an opinion joined wholly or in part by three other judges.

'Due Process Rights'

Soviet restrictions, he said, effectively "denied Kowalchuk the opportunity to conduct even a primitive preparation of a defense, . . . the most basic of due process rights."

The Justice Department, he concluded, thus placed itself in the "uncomfortable position of arguing allegations which it has not had the opportunity to verify and which it, in all conscience, must view as suspect."

Entirely apart from questions of due process and the trustworthiness of Soviet evidence, a number of defense lawyers maintain that their clients are also disadvantaged by a fluke of American law that requires them to be tried in civil, not criminal, proceedings, even though the consequences—loss of citizenship and deportation—can be as severe as many criminal penalties.

Standards of evidence are less rigorous than in criminal cases. And because these are civil cases, the defendants do not qualify for public defenders. Most are blue-collar pensioners with modest savings, but defense costs have run as high as several hundred thousand dollars, which private law firms must absorb on a *pro bono* or charitable basis.

"You end up running these people right into the ground," said a Midwestern attorney who asked that his name not be used. Like several others, he said his law firm had received anonymous threats after it had defended an accused war criminal.

Moreover, federal civil proce-

dures require defendants who lose in district court to find any extrajudicial evidence and file an appeal within one year, even though the only conceivable source may be the Soviet Union.

"Unfortunately, what most of them do is turn to the neighborhood lawyer who may be a drunk, incompetent or both, and he immediately loses," said a Baltimore attorney who also asked not to be identified. "Then, at five minutes to midnight, before the appeal deadline, they change lawyers. By then it's too late."

A third factor is that in civil cases, the government is not required to give the defense any material in its possession that might be beneficial to its case; in criminal cases, this is required by the so-called Brady rule.

Most important, some defense lawyers believe, is the overpowering emotional context of the Holocaust that pervades these cases, regardless of how strong or weak the linkage may be between defendants and atrocities.

"We are, in a way, the victims of hydraulic pressures, of a wave of public sentiment that causes us to lose sight of certain realities," Carroll said, in a reference to special difficulties of verifying Soviet evidence.

"We tend to overlook this because we see that a terrible crime has been committed—the Holocaust—and we perceive that the OSI is finding the guilty and punishing them."

"The typical judge is just as impressed as anyone by the implications of this (Soviet) testimony," Carroll said. "But it occurs to me that our judicial procedures are not made for this kind of case."

Next: Do the Soviets manufacture evidence?

Setting the Record Straight

The pages of Ukrainian bourgeois nationalist publications betray more signs of despair. The reason is this: because of the 40th anniversary of the Nuremberg Trials over the leaders of Nazi Germany, the Western press also writes about war criminals of Ukrainian descent, many of whom are living out the remainder of their days in some Western countries.

Ringleaders in panic

The article is an example of Soviet disinformation directed at Canadian students of Ukrainian descent.

It is an attempt to discredit Canadian youth.

The ringleaders of Ukrainian nationalist centers in the USA and Canada feel especially uneasy. Under public pressure, courts of those countries began to investigate cases of some former Nazi collaborators charged with mass killings of civilians on the Nazi-occupied territories of the USSR and other European countries during WWII. Western judicial bodies at last showed some interest in these war criminals, but, as the hitherto experience suggests, they are not likely to be severely punished. Still, articles on the pages of nationalist publications are reminiscent today of wartime reports. They call for "defending the good name of veterans who struggled for freedom", for "repulsing the enemy's onslaught", for "rallying in the face of danger", etc. Various "protection" committees and foundations are being promptly established in defense of former Nazi lackeys. "Heavy artillery" is deployed, too: hawks of all sorts speak in parliaments and government agencies in defense of these war criminals.

Our readers may ask: if the former Nazi collaborationists are not in serious danger, why the jitters?

Explanation is simple enough: as the criminal past of some nationalist leaders is being exposed, the Ukrainians living abroad, especially, the younger generation, develop greater distrust of their "liberation" slogans. Thus, the "liberationists" perpetual problem of youth and, consequently, of cadres and social base, is growing more acute.

Although the nationalist publications are yelling about the "patriotism" of young Ukrainians abroad and their alleged "loyalty to liberation ideals of their fathers", steadily growing numbers of young men and women refuse to be puppets in the hands of arch-reactionary politicians. Young Ukrainians become outspoken in their dissatisfaction with the actions of the ringleaders and the order of things reigning in the nationalist milieu.

These processes have been given an impetus by the exposures of and court proceedings against war criminals in the U.S. and Canada. That is the root cause of the nationalist leadership's flap. Hence the feverish search for ways which could help them keep under their sway that part of foreign Ukrainian youth who, at least to some extent, still believe in demagogic and pseudopatriotic slogans of these "advocates" of the Ukrainian people's interests.

It is for this goal that in the Canadian city of Toronto they have recently convened a conference of the so-called Central Union of Ukrainian Students (CUUS). It should be noted that most fear and anxiety on account of the widening generation gap in the nationalist milieu is shown by Banderite extremists. One of today's Banderite leaders, Bondan Putei, made a speech at the conference. From his verbiage one could infer that questions of ideological and political indoctrination of youth are among the most important for the "liberationists' establishment" today.

The impression is, however, that the Banderite leader failed to pass betrayal and war crimes for "liberation and patriotic struggle", for, according to some nationalist publications, those attending the Toronto conference "voiced diverse and conflicting views". Among those who tried to awaken the national (read: nationalist — V. Ch.) conscience of youth were Banderite Yuri Darevych, lecturer of York University, Uniate priest Petro Bilanyuk, lecturer of Toronto University Danylo Struk, Dan Perrin, representative of American hawks, and other "mentors" of youth. Those who were holding forth at the conference on "patriotism" and "the lofty mission" of the younger generation of Ukrainians living abroad made plain their understanding of "patriotism". Thus, it became clear from the address of Yuri Shymko, member of the Ontario provincial legislature, that "the students' duty" was to stand up for war criminals of Ukrainian descent. The overwhelming majority of those present responded to those appeals skeptically or negatively. The result of this conference was inconclusive: the participants left without reaching any agreement.

The sponsors of a youth political seminar held in Windsor (Canada) also attempted to "win young people over to the vital problems of the Ukrainian emigration".

At that forum, too, the organizers rebuked young Ukrainians for indifference, apathy and passivity in the so-called public life.

As one might have expected, the above mentioned "vital problem" — how to neutralize the impact of exposing war criminals of Ukrainian extraction on Ukrainian youth — also figured there prominently. Those exposures — and that was what the speakers were so worried about — threatened to completely discredit the nationalist "leaders" and even result in "the collapse of Ukrainian organized life" in the emigration.

Almost each nationalist publication writes today about indifferent or hostile attitudes of youth on the adventurist "liberation" politicking by a handful of nationalist "leaders". The young people become more and more convinced that nationalism has finally discredited itself as a reactionary ideology and policy hostile not only to the interests of the Ukrainian people but also to Ukrainians living abroad. These convictions among the young generation of Ukrainians abroad were not born today. At the last so-called World Congress of Free Ukrainians, held in Toronto several years ago, representatives of youth's organizations resolutely dissociated themselves from the nationalist establishment. One of the youth publications wrote at that time that the ideals and goals of Ukrainian nationalism were not shared by younger generations of Ukrainians living abroad, and that those generations "did not support and were unwilling to participate in the arenaic and hopeless struggle of emigre political groups which lack realism and progressive ideas". The selfsame CUUS once admitted that a considerable part of "Banderite youth" regarded them

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Generally speaking, the Eastern Slavic tribes' artistic and literary legacy of the 6th-9th centuries ensured the development, flourishing and spreading of Old Rus culture on the vast territory of Eastern Europe. In that lies the paramount significance of the pagan era in the history of Kievan Rus.

MYKOLA KOTLYAR, D. Sc. [History]
[Special to NFU]

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ration. In recent years the journal printed a series of materials about such small, but rich in historical monuments, towns as Kaniv, Nizhyn, Bilhorod-Dnistrovsky and Mukacheve, about such reserves as Oleksandriya in Bila Tserkva and Askania Nova. These towns and reserves were referred to as examples of careful preservation of heritage, of their history, and their harmonic unity with today's life.

The journal's "Bibliography Column" informs readers about new publications on the problems of history and culture. The most interesting books are thoroughly reviewed.

There is every indication that the Monuments of the Ukraine is a popular-scientific publication, that is such which, after fiction, has a great popularity among the general public.

ALEXANDER KYRYCHENKO,
staff member of the Ukrainian Society
for the Protection of Historical
and Cultural Monuments

Among other Ukrainian cities Odessa is known for its special charm. On hearing the word "Odessa", one's heart is flooded with warm and sincere feelings, for Odessa means caressing sea waves and sunshine, picturesque streets and world-known Opera, the Pryvoz Marketplace known throughout the Soviet Union, the Potyomkin Stairway, and many other sights. The list can be continued, but in the final count everything comes to the fact that the city is populated by a special sort of people — Odesites, who have their own style of language, sparkling humor and a bent for practical jokes. All of them are in love with their native city; they take care of it, adorn it, and preserve its antiquities — be they world known or, so to say, of local importance, like this wrought-iron fence on the railroad station square, which is so unusual in our rational age.

Although the nationalist publications are yelling about the "patriotism" of young Ukrainians abroad and their alleged "loyalty to liberation ideals of their fathers", steadily growing numbers of young men and women refuse to be puppets in the hands of arch-reactionary politicians. Young Ukrainians become outspoken in their dissatisfaction with the actions of the ringleaders and the order of things reigning in the nationalist milieu.

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The speaker also blurted out the main objective of the organizers and actual orchestrators of the conference who prefer to remain in the background. B. Futei said that the entire nationalist cause was hurt by the relentless exposures of war criminals of Ukrainian descent and by the attention of the public and part of the Western press to this matter. Unable to refute the obvious facts, he had to admit that people believed in the validity of accusations brought against the war criminals of Ukrainian extraction, and for that reason he called upon those present to counter those accusations in every way possible, because, as he put it, they discredit "the entire Ukrainian community".

above mentioned "vital problem" — how to neutralize the impact of exposing war criminals of Ukrainian extraction on Ukrainian youth — also figured there prominently. Those exposures — and that was what the speakers were so worried about — threatened to completely discredit the nationalist "leaders" and even result in "the collapse of Ukrainian organized life" in the emigration.

Almost each nationalist publication writes today about indifferent or hostile attitudes of youth on the adventurist "liberation" politicking by a handful of nationalist "leaders". The young people become more and more convinced that nationalism has finally discredited itself as a reactionary ideology and policy hostile not only to the interests of the Ukrainian people but also to Ukrainians living abroad. These convictions among the young generation of Ukrainians abroad were not born today. At the last so-called World Congress of Free Ukrainians, held in Toronto several years ago, representatives of youth's organizations resolutely dissociated themselves from the nationalist establishment. One of the youth publications wrote at that time that the ideals and goals of Ukrainian nationalism were not shared by younger generations of Ukrainians living abroad, and that those generations "did not support and were unwilling to participate in the archaic and hopeless struggle of emigre political groups which lack realism and progressive ideas". The selfsame CUUS once admitted that a considerable part of Ukrainian youth abroad were "not only unable but also plain unwilling to take the torch from their fathers" because of the "ideological bankruptcy" of the latter.

The generation gap in the milieu of Ukrainian bourgeois nationalists is deepening. This was borne out by the CUUS conference. The nationalist "elite" are fully aware that the future of nationalist "liberation" centers depends on how "the youth problem" will be solved, on their ability to keep "youth reserves" under their sway. This awareness torments them. This is the reason for their anxiety and panic.

V. CHUMAK

House of Commons Debates

May 27, 1986

WAR CRIMINALS

DESCHÊNES COMMISSION—REQUEST FOR TIME EXTENSION

Hon. Bob Kaplan (York Centre): Mr. Speaker, my question is for the Prime Minister and concerns the Deschênes Commission. The Prime Minister will know that the Deschênes Commission has indicated that it does not have sufficient time under its present mandate to complete the assignment given to it by the Government. Is the Government prepared to give it the time it needs to do the job it was given?

Hon. John C. Crosbie (Minister of Justice and Attorney General of Canada): Mr. Speaker, the hon. gentleman will recall that when the Deschênes Commission was first appointed, it was asked and expected to report by the end of December, 1985. That period was extended to the end of June, 1986. We certainly want to see that the Deschênes Commission has reasonable time to complete its report. I think it has made a great deal of progress and we will be replying shortly to letters recently received from the commission.

ACCESS TO UNITED NATIONS FILES

Hon. Bob Kaplan (York Centre): Mr. Speaker, considerable volumes of new material on war criminals has recently been discovered at the United Nations. The Deschênes Commission cannot request this material, only a Government can. Has the Government asked for this material? If not, is the Government prepared to do so?

Hon. John C. Crosbie (Minister of Justice and Attorney General of Canada): Mr. Speaker, the Government is prepared to do whatever is necessary to see that action is taken to follow up on any report we are given by the Deschênes Royal Commission. Its main task is to advise us on whether or not the present law is now adequate, and if it is inadequate, in what way it should be changed so that this matter can be properly pursued even after 20 or 30 years of inaction by the Government that occupied the seat of power in Ottawa through all those years.

House of Commons Debates

May 28, 1986

WAR CRIMINALS

EXTENSION OF COMMISSION'S MANDATE URGED

Mr. David Berger (Laurier): Mr. Speaker, the Commission on War Crimes has asked the Government for more time to complete its investigative work. Five months ago the Commission referred to its investigative task as a colossal one. It said its success depends on the time and resources allocated to it.

However, the Commission has yet to arrange to travel abroad to gather evidence, be it to the Soviet Union or to any other country where relevant evidence exists.

The guiding consideration may be found in the Commission's decision concerning foreign evidence, where it said that the quality of the Commission's work and the soundness of its conclusions should not be threatened by severe, if not unrealistic time constraints.

What is at stake now is no less than the integrity of the whole effort to bring suspected Nazi war criminals to justice with all deliberate speed. I trust that the Government will extend the Commission's mandate so that justice may be done and the Commission may be able to complete its colossal enterprise.

Soviets say rules acceptable for visit of war crimes probe

BY RICHARD CLEROUX
The Globe and Mail

OTTAWA

The Soviet Union has agreed to conditions set down by Mr. Justice Jules Deschênes for his commission on war criminals in Canada to gather evidence there.

Judge Deschênes and his two inquiry lawyers, Yves Fortier and Michael Meighen, are meeting here in private today to consider the Soviet invitation, made in a telegram to the Canadian Embassy in Moscow.

A. P. Makarov, chargé d'affaires at the Soviet Embassy in Ottawa, said yesterday that his Government is eager to co-operate fully with the Canadians, and visas could be arranged "without delay."

It is unclear whether the lawyers will actually go to the Soviet Union, because the commission's mandate expires on June 30. Judge Deschênes has requested an extension, but there has been no reply from the Conservative Government. It would be his second six-month extension.

The Government is under strong pressure from a number of Canadians, many of European origin, to prevent the inquiry from gathering evidence in the Soviet Union. They fear that such testimony could be tainted by political considerations.

The Soviets have agreed to allow the inquiry lawyers to interview 34 witnesses for two of more than a dozen cases on which the commission is seeking information.

Mr. Makarov said the lawyers would be allowed to take their own interpreters and stenographers, "ask all the questions of interest to them," videotape the entire proceedings, "cross-examine, interrogate, and I think as well they will be given access to the archives — the

evidence on these cases in the archives."

Mr. Makarov said the Canadians would be welcome after June 10, by which time the Soviets would have gathered the 34 witnesses, a task that he expects to take two weeks. Mr. Makarov described the witnesses as "mostly elderly, living in villages."

He said the two cases for which the Soviets are willing to supply witnesses deal with the massacre of villagers by Nazi collaborators inside the Soviet Union. "These two men killed a lot of people in villages," Mr. Makarov said.

Both are believed to be living in Canada.

Mr. Makarov said "work is going on" to find witnesses in other cases under study by the commission.

The previous Soviet reply to the inquiry's request to visit the Soviet Union left the commission lawyers far from satisfied.

Mr. Meighen said the Soviets never gave the names of the "30-odd witnesses" they have located, and referred to "only two of the at least a dozen cases" of interest to the commission.

"They did not mention the legal framework," Mr. Meighen said. "We didn't like the idea of going over there without first establishing the rules."

Mr. Meighen said several other countries have indicated willingness to allow the commission to gather evidence about alleged Nazi war criminals living in Canada.

He said one case involves an alleged Dutch Nazi collaborator, while evidence in other cases is in Poland, Hungary, Britain and the United States.

Moreover, the Israelis "have promised to look into some things for us, and the evidence they have will come when it does."

Nazi probe rejects conditions for visit to U.S.S.R.

OTTAWA (CP) — The Deschênes commission has refused an invitation from the Soviet Union to gather information behind the Iron Curtain on suspected Nazi war criminals now living in Canada, commission lawyer Yves Fortier said yesterday.

The invitation was rejected because the Soviets have not agreed to let Canadian lawyers interrogate Soviet witnesses in accordance with Canadian rules of evidence, Fortier said in an interview.

Justice Jules Deschênes, head of a one-man federal commission investigating allegations that there are Nazi war criminals in Canada, had said he would send lawyers and researchers to foreign countries only if certain conditions were accepted in advance.

Deschênes, former chief justice of the Quebec Superior Court, said the countries would have to promise to provide access to original German documents, permit the use of independent interpreters, allow videotaping of all proceedings and allow an examination of witnesses in accordance with Canadian rules of evidence.

A spokesman for the Soviet Embassy in Ottawa said Wednesday that Moscow had endorsed Deschênes's "main" demands and had invited commission representatives to travel to the Soviet Union any time after June 10.

"As far as we are concerned ... all the major requests have been complied with," said Alexei Makarov, a consular official.

"Although I think the wording is not the same, the essence is."

But Fortier, one of two lawyers working alongside Deschênes since the commission was established in February 1985, disagreed.

"What they have told us is that if (the interrogation) would be done within the framework of the legislation of criminal procedure of the U.S.S.R. and Canadian lawyers would be given the opportunity to

clarify from witnesses questions of relevant interest," he explained.

"In other words, the examinations would be conducted by the office of the procurator of the Soviet Union ... and that is not acceptable."

Fortier said that though the Soviet Union has accepted the essence of all

other conditions, the commission will not go there unless its lawyers have the same rein there as they would have in Canadian courts.

A letter to that effect was sent through diplomatic channels Thursday to the procurator in Moscow with a copy to Makarov in Ottawa, Fortier said.

The commission will reconsider its response if the Soviets modify their position or advise that they have been misunderstood, he added.

Poland has taken a similar stance, advising that any interrogation

would be controlled by a Polish judge.

"Put very simply, without their agreement to all the conditions ... it'll be impossible for the commission to consider travelling to examine witnesses within the framework which they have outlined," Fortier declared.

The commission has already gathered some evidence in West Germany, the Netherlands, France, England and the United States.

War crimes truth is worth a delay

Justice Jules Deschênes must decide for himself whether to send his war-crimes inquiry to gather evidence in the Soviet Union. But if he elects to proceed, the Canadian government must remove the remaining obstacle to his pursuit of the facts.

Some time ago Deschênes requested Soviet permission for commission lawyers to travel to the Soviet Union to examine documents and interview witnesses of alleged or suspected war crimes. The judge specified various conditions intended to ensure the reliability of the evidence.

The Soviet government has so far failed to satisfy those conditions, prescribing procedures that could taint any findings. Now the commission has told the Soviets that its lawyers will not go to the Soviet Union unless they can work by Canadian rules of evidence.

If Soviet authorities relent, it would still be up to Deschênes whether the potential results, under the conditions, make the effort worthwhile. The final obstacle would then arise not in the Kremlin but in Ottawa.

The Deschênes commission's mandate runs out June 30. The judge has requested a six-month extension — it would be his second. But Justice Minister John Crosbie has until now withheld his permission.

The reason for Crosbie's hesitation is all too apparent. He is under intense pressure from a number of organizations (and a few of his back-benchers?) claiming to speak for Canadians of various East European origins.

The Ukrainian community especially has expressed deep hostility to any commission inquiry behind the Iron Curtain. They fear that, with doctored or one-sided evidence, the Soviets will try to incriminate wartime anti-Soviets as Nazi collaborators — anti-Soviets who may now be living in Canada.

Crosbie also feels contrary pressure from those who are determined to track down any Nazis in Canada, of whatever origin.

It is not an easy political call for the minister. But if the Deschênes commission is to have any point at all, the government must grant it the time to finish its work.

Suspensions have lasted for 40 years that some war criminals may have slipped into Canada and now live here, undetected and unpunished. The purpose of the commission is, so far as possible, to prove or disprove those suspicions.

The completion of that duty is too important to be abbreviated by some arbitrary deadline. Above all, the cabinet cannot let political considerations deflect the commission from the truth — or whatever fragments of the truth remain to be found.

By the very scale of their evil, Nazi war criminals forfeited all right to refuge. It would be a crime if any one of them escaped punishment because of politics, or the passage of time.

